

# Exhibit 6

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## COURT REPORTING



Transcript of William E. English, Ph.D.

Friday, September 13, 2019

*Doe No. 1 et al v. Putnam County et al*

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CONDENSED COPY

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF NEW YORK

3 Civil Action No. 7:16-cv-8191

4 - - - - - x

5 JOHN DOE NO. 1; JOHN DOE NO. 2; and :  
6 NEW YORK STATE RIFLE AND PISTOL :  
7 ASSOCIATION, INC. :  
8 Plaintiff, :  
9 v. :  
10 PUTNAM COUNTY, and MICHAEL C. :  
11 BARTOLOTTI, in his official capacity :  
12 as County Clerk for Putnam County, :  
13 Defendants. :  
14 - - - - - x  
15 Friday, September 13, 2019  
16 Deposition of: WILLIAM E. ENGLISH, Ph. D.,  
17 called for examination by counsel for Defendants,  
18 pursuant to notice, at the Law Offices of Cooper &  
19 Kirk, 1523 New Hampshire Avenue, NW, Washington,  
20 D. C., commencing at 9:36 a. m., before Barbara A.  
21 Huber, CSR and Notary Public in and for the  
22 District of Columbia

		Page 2		Page 4
1	APPEARANCES:		1	PROCEEDINGS
2	On behalf of Plaintiffs:		2	Whereupon,
3	CHARLES J. COOPER, ESQUIRE		3	WILLIAM E. ENGLISH, Ph.D.,
4	DAVIS COOPER, ESQUIRE		4	was called as a witness and, having been first duly
5	Cooper & Kirk, PLLC		5	sworn, was examined and testified as follows:
6	1523 New Hampshire Avenue, NW		6	EXAMINATION BY COUNSEL FOR DEFENDANTS
7	Washington, D.C. 20036		7	BY MR. DAGUE:
8	202.220.9600		8	Q Good morning, Dr. English. How are you?
9	ccooper@cooperkirk.com		9	A Good morning. Very well. Thank you.
10	dcooper@cooperkirk.com		10	Q We met a few minutes ago off the record.
11			11	Let me formally introduce myself. My name is
12	On behalf of Defendants:		12	Harris Dague. I'm an Assistant Attorney General
13	C. HARRIS DAGUE, ESQUIRE		13	with the State of New York, out of our Albany
14	MONICA A. CONNELL, ESQUIRE		14	office.
15	State of New York		15	I'm joined by my colleague, Monica
16	Office of the Attorney General		16	Connell, to my left. She is an Assistant Attorney
17	The Capitol, Albany, New York 12224 -- and		17	General Special Counsel with the State of New York
18	28 Liberty Street, New York, New York 10005		18	out of our New York City office.
19	518.776.2621; 212.416.8965		19	Nice to meet you, sir.
20	harris.dague@ag.ny.gov		20	A Likewise.
21	monica.connell@ag.ny.gov		21	Q Have you ever been deposed before?
22	* * * * *		22	A I have, yes.
		Page 3		Page 5
1	CONTENTS		1	Q Okay. I'm going to ask you about that in
2	EXAMINATION BY:	PAGE	2	a few minutes, but let me run through some rules
3	Mr. Dague	4	3	and things that'll maybe make this go smoother and
4	Ms. Connell	328	4	get us both out of each other's hair sooner rather
5			5	than later.
6			6	A Great.
7			7	Q You probably know these if you've been
8	DEFENDANTS' DEPOSITION EXHIBITS:	PAGE	8	deposed, so don't worry about it if you know them
9	1 - Rebuttal Report	12	9	already. I'm going to ask you a series of
10	2 - Curriculum Vitae	41	10	questions today.
11	3 - Article by Iyengar and Westwood	240	11	Can you provide me with verbal answers?
12	4 - Online Article from Poststar.com	286	12	A Yes.
13	5 - Online Article from NBCNewYork.com	286	13	Q Okay. Barbara, the court reporter here,
14	6 - Article from Annals of Internal Medicine	297	14	is taking down everything we say. To the extent
15			15	you nod or provide an "uh-huh," which is common
16			16	parlance, it's harder for her to take down so we
17			17	try to get a clean transcript. By the same token,
18			18	let's both try not to talk over one another. I
19			19	know that is very tempting, especially as the
20			20	afternoon wears on and my questions get less and
21			21	less sharp and you know where I'm going. If we do,
22			22	your counsel or I'll just remind you,

<p style="text-align: right;">Page 6</p> <p>1 non-insultingly, that, okay, let's try not to talk 2 over each other here. And I -- 3 A Sounds good. 4 Q -- will try to do the same. I could be 5 guilty of it as well. 6 If you don't understand my question, 7 please ask me to rephrase it. You're not going to 8 insult me in any way. Sometimes questions are 9 ill-formed, especially when talking about kind of 10 complex data and things of that nature. So just 11 ask me to make sure you understand the question or 12 ask me to rephrase it. 13 If you answer a question, is it fair for 14 me to assume that you understood the question? 15 A Right. Yes. 16 Q Okay. This is not a quiz. I'm not here 17 to trick you. So, again, if you think a question 18 doesn't make sense or sounds tricky, just let me 19 know that and I'll rephrase it, because that's not 20 the goal. We all want a clean transcript that we 21 can use. 22 As your counsel probably advised you,</p>	<p style="text-align: right;">Page 8</p> <p>1 Q And just to be clear, I'm not asking you 2 to testify as to the content of those discussions, 3 just the time generally. 4 Who was present when you met in person? 5 A Two counsels to my right. 6 Q Referring to Davis and Chuck Cooper? 7 A Yes. 8 Q And who was present when you were on the 9 telephone -- two phone calls, if you know? 10 A I believe it was the same two counsels. 11 And I believe there was a third lawyer. Perhaps 12 Pete. 13 Q Okay. And do you know if this third 14 lawyer worked with Mr. and Mr. Cooper? 15 A Yes. At this same firm. 16 Q At any time during these prep sessions 17 did you review any materials? 18 A What do you mean by review materials? 19 Q Did any of your counsel provide you with 20 documentary records to review in preparation for 21 the deposition? 22 A Oh, yeah. They provided me, I believe,</p>
<p style="text-align: right;">Page 7</p> <p>1 breaks are fine. The only thing I would ask is if 2 you do want break, a bathroom break or something, 3 just let's not take one when there's a question 4 pending. Answer the question. Let me know. Take 5 a break. 6 I try to take a five-minute break every 7 hour or so anyway, just to stretch out, you know, 8 use the bathroom, get fresh. 9 Okay. Could you just state your full 10 name for the record, Doctor?</p> <p>11 A Yeah. William Edward English. 12 Q Okay. And are you a Ph.D.? 13 A I am. 14 Q In what? 15 A My Ph.D. is in political science. 16 Q Okay. And did you meet with counsel in 17 preparation for today? 18 A Yes. 19 Q How many times? 20 A Oh, I don't remember off the top of my 21 head. We probably had at least two phone calls and 22 at least one in-person discussion.</p>	<p style="text-align: right;">Page 9</p> <p>1 documents that had already been from the court, and 2 explaining the judge's initial decisions. 3 Q Okay. 4 A And then they provided me with the expert 5 witness reports that I was asked to comment upon. 6 Q Okay. And did they provide you, 7 obviously, with a copy of your expert report in 8 this matter to review as well, prior to this 9 deposition? 10 A Yes. 11 Q Did they provide you at any time with a 12 copy of the civil complaint in this action? 13 A Yes. 14 Q And when I say civil complaint, do you 15 know what I mean by that? 16 A I believe so. 17 Q Okay. 18 A If I -- if I've understood that correct, 19 this is the -- the initial objection to this law, 20 and then, as well, the judge's -- whatever stage 21 it's at right now. My recollection is that running 22 through the arguments of the case, the potential</p>

<p style="text-align: right;">Page 10</p> <p>1 focal points and -- and questions that have been 2 identified.</p> <p>3 Q Okay. So fair to say that you saw a 4 document called "complaint," which you understand 5 to be the document that initiated this lawsuit 6 challenging the law, and you saw, at some point, a 7 determination or decision from a judge in this case 8 that went through the issues and arguments and made 9 a rule?</p> <p>10 A Yes. I -- I definitely saw the latter. 11 I -- I believe the -- the complaint may have been 12 summarized in that latter statement. I'm not sure 13 if --</p> <p>14 Q Sure.</p> <p>15 A -- was a separate PDF or --</p> <p>16 Q Do you review civil complaints frequently 17 in your field?</p> <p>18 A I do not.</p> <p>19 Q How many civil complaints would you 20 estimate you've reviewed in your -- in your 21 professional --</p> <p>22 A And by reviewed --</p>	<p style="text-align: right;">Page 12</p> <p>1 did you meet with any officials of the NRA? 2 A No.</p> <p>3 Q In preparation for your expert report, 4 did you meet with any of the named Plaintiffs in 5 this lawsuit, either John Doe Number 1 or John Doe 6 Number 2?</p> <p>7 A I did not.</p> <p>8 Q Have you ever met John Doe Number 1 or 9 John Doe Number 2, as they are styled in this 10 lawsuit?</p> <p>11 A I have not.</p> <p>12 MR. DAGUE: If you would mark that as 13 Defendants' Exhibit 1.</p> <p>14 (Defendants' Deposition Exhibit No. 1 15 marked for identification.)</p> <p>16 BY MR. DAGUE:</p> <p>17 Q Dr. English, I've handed you what's been 18 marked as Defendants' Exhibit 1. I'm going to ask 19 you just to take a brief look at that, familiarize 20 yourself with it. I'm, obviously, going to have a 21 lot of questions on that particular document 22 throughout the deposition, but at this point I just</p>
<p style="text-align: right;">Page 11</p> <p>1 Q -- career?</p> <p>2 A -- just to clarify, you mean read, seen, 3 offered a professional opinion on?</p> <p>4 Q How about offered professional opinions 5 on.</p> <p>6 A Yeah. Probably one other.</p> <p>7 Q Okay. In preparation for the issuance of 8 your expert report, did you meet with anyone 9 associated with the National Rifle Association?</p> <p>10 A I did not.</p> <p>11 Q In preparation for your deposition 12 testimony today, did you meet with anyone 13 associated with the National Rifle Association?</p> <p>14 A And just to be clear, associated, what 15 does associated --</p> <p>16 Q Sure. That's a fair question.</p> <p>17 A I -- I gather, from the conversation 18 earlier, that Mr. Cooper has done work with the 19 NRA. Does that make him an associate?</p> <p>20 Q Sure. That's fair. That's a very fair 21 question. And I will -- let me rephrase.</p> <p>22 In preparation for your deposition today,</p>	<p style="text-align: right;">Page 13</p> <p>1 want you to identify it.</p> <p>2 A Yes. This is my expert witness report.</p> <p>3 Q Okay. And that's the report that you 4 drafted and submitted in this action, right?</p> <p>5 A That is correct.</p> <p>6 Q And this report that you're looking at 7 constitutes your entire expert opinion in this 8 matter?</p> <p>9 A I was the -- my entire opinion on what I 10 was asked to do, which is to evaluate the three 11 expert witness reports --</p> <p>12 Q Sure.</p> <p>13 A -- that I was given.</p> <p>14 Q And at this point, what I meant by that 15 is there's no supplemental --</p> <p>16 A There's not --</p> <p>17 Q -- to this?</p> <p>18 So at this point, there's no supplements 19 or amendments to this document that you know of?</p> <p>20 A Correct.</p> <p>21 Q Okay. Did anyone assist you with the 22 creation of this report?</p>

<p>1 A To be clear about --</p> <p>2 Q Yeah, let me be clear. I'm not looking</p> <p>3 for any specific details, what -- if counsel</p> <p>4 assisted you with creation of this, so let me</p> <p>5 specify.</p> <p>6 Did anyone non-counsel to you in this</p> <p>7 action assist you with the creation of this report?</p> <p>8 A No.</p> <p>9 Q You don't have any research assistants</p> <p>10 that assisted you on this?</p> <p>11 A Not on this, no.</p> <p>12 Q Does this report include your opinions</p> <p>13 with respect to the questions that counsel asked</p> <p>14 you to respond to?</p> <p>15 A It does.</p> <p>16 Q And this report was issued on or about</p> <p>17 July 23rd of 2019; is that fair?</p> <p>18 A Yes.</p> <p>19 Q And since July 23rd of 2019, do you have</p> <p>20 any amendments or changes that you'd like to offer</p> <p>21 to this report at this point?</p> <p>22 A No.</p>	<p style="text-align: right;">Page 14</p> <p>1 sometimes intentional, sometimes not intentional --</p> <p>2 people misuse or misunderstand data.</p> <p>3 And so a -- a good portion of my work has</p> <p>4 been to take studies, and often important studies,</p> <p>5 and examine their underlying data or methods or</p> <p>6 statistical approaches, and to try to evaluate</p> <p>7 their conclusions in the light of their particular</p> <p>8 claims as well as in light of larger say public</p> <p>9 policy, debates that they feed into.</p> <p>10 So I think of myself as a methodologist,</p> <p>11 someone who's interested in public policy. And my</p> <p>12 work has also examined problems of institutional</p> <p>13 failures, institutional design, role of informal</p> <p>14 norms, informal institutions. And I'm in a -- in</p> <p>15 the department of -- of ethics, economics, and</p> <p>16 public policy. So I'd say, you know, in sum,</p> <p>17 I'm -- I'm a methodologist interested in the use of</p> <p>18 evidence in the social sciences, and the</p> <p>19 implications on policy.</p> <p>20 Q Do you find, in your professional career,</p> <p>21 that a lot of social science, say prior to your</p> <p>22 engagement in the field, didn't or doesn't rely on</p>
<p>1 Q Okay. So as this report stands currently</p> <p>2 in Defendants' Exhibit 1, you stand by all the</p> <p>3 conclusions and opinions you issued in this report,</p> <p>4 fair?</p> <p>5 A Yes.</p> <p>6 Q What do you consider to be your field of</p> <p>7 expertise?</p> <p>8 A So I'm a social scientist by training.</p> <p>9 And my dissertation -- as long-standing interest,</p> <p>10 I'll say the methodological foundations of social</p> <p>11 science. So my dissertation examined the strengths</p> <p>12 and weaknesses of different methodological</p> <p>13 approaches, approaches and statistics, formal</p> <p>14 modeling. And I'd say the -- the one thing that</p> <p>15 has defined my scholarly arc has been thinking</p> <p>16 about how do we -- how do we do good public policy,</p> <p>17 think about social phenomenon in the most</p> <p>18 comprehensive and informative way, and how do we</p> <p>19 integrate data and analysis into those evaluations.</p> <p>20 And a concern, for me, can run two ways.</p> <p>21 I think there's a lot of bad social science; there</p> <p>22 is, there's a lot of ways in which -- you know,</p>	<p style="text-align: right;">Page 15</p> <p>1 data enough?</p> <p>2 A Oh, no, the question is not whether</p> <p>3 people rely on data enough. I think there's</p> <p>4 certainly some areas of public policy where</p> <p>5 historically we haven't had good data, and -- and</p> <p>6 there's many attempts to increase our data. And</p> <p>7 those are generally I think good developments. I</p> <p>8 think the -- the larger challenge for many social</p> <p>9 scientists is there's a desire to be scientific, a</p> <p>10 desire to use data, but it's actually very</p> <p>11 difficult to do that well.</p> <p>12 And so, you know, colleagues and I</p> <p>13 debate -- sometimes jokingly -- but I -- I -- in my</p> <p>14 own opinion, probably the majority of say published</p> <p>15 social science research.</p> <p>16 And so there's been these replication</p> <p>17 crises (sic) that you may know in the</p> <p>18 psychological sciences. Many findings, many</p> <p>19 experiments, many statistical conclusions we</p> <p>20 haven't been able to replicate.</p> <p>21 And I'd say this feeds into criticisms</p> <p>22 I've been concerned about or criticisms that I've</p>

<p style="text-align: right;">Page 18</p> <p>1 made for the last decade that there's a variety of      2 statistical ways that people can reach conclusions      3 they'd like to reach without really being rigorous      4 in alternative explanations. I mean rigorous      5 about, you know, different modeling approaches.</p> <p>6 And so to answer your question, I think      7 in the social sciences, there's a lot of misuse of      8 data. And that's my con -- my primary concern, is      9 that, you know, how -- you know, what really is the      10 most important data that bears on this question:      11 How can we best reason with and about it.</p> <p>12 Q Are there areas that you found -- strike      13 that.</p> <p>14 Have you found generally in the social      15 science area that data is harder to come by than in      16 other research areas because of the nature of --      17 because of the natures of the questions studied in      18 social sciences?</p> <p>19 A I -- you might have to rephrase that.</p> <p>20 Q Sure.</p> <p>21 A Are you saying -- and just as a time      22 point, you're saying more recently has data --</p>	<p style="text-align: right;">Page 20</p> <p>1 because of digital technologies, there's been a      2 wealth of data. In other areas of the social      3 sciences -- I have friends that study lobbying and      4 money in Congress. And what I hear from them is      5 the way deals are actually done are not things that      6 show up on campaign contribution disclosures.      7 They're things that happen over dinners. And so      8 that data is hard to get.</p> <p>9 So I -- I think it's very particular to      10 the question you're asking, whether or not there's      11 been a dearth or a -- a wealth of data. But I'd      12 say social scientists have been thinking more in      13 recent decades of how do you get data that's      14 appropriate for the question you're asking.</p> <p>15 Q Are there areas or topics that you have      16 studied in your career where data points are      17 immeasurable, there is no data for certain reasons?</p> <p>18 A Sure. There's many questions you could      19 ask where you begin by realizing if I really wanted      20 to answer that question, there's certain data I      21 want which I can't find publicly now. And then you      22 think of other ways that -- sometimes you can</p>
<p style="text-align: right;">Page 19</p> <p>1 Q Yeah, more --</p> <p>2 A -- been known?</p> <p>3 Q -- recent.</p> <p>4 A Just to clarify, to make sure I      5 understand the question, it's about whether data      6 has become more or less difficult to obtain in      7 certain areas of the social scientists?</p> <p>8 Q Let me ask you -- let me rephrase.</p> <p>9 Certainly in other fields, like the      10 medical field --</p> <p>11 A Uh-huh.</p> <p>12 Q -- or other scientific fields, do you      13 find that data is generally more available in those      14 fields than in more generic social science-type      15 fields?</p> <p>16 A It's a very hard question to answer in      17 the abstract. You know, on the one hand -- so I      18 have friends that study political psychology and      19 they look at Twitter posts. And if you study      20 Twitter, there are literally trillions of data      21 points now you can use.</p> <p>22 So in some areas of the social sciences,</p>	<p style="text-align: right;">Page 21</p> <p>1 approximate that data. And then sometimes you can      2 get at it directly.</p> <p>3 But I mean to put a finer point on it, I      4 mean there's the old joke about, you know, people      5 only find their keys under the -- the lamp lights      6 in the street. And I'd say many social scientists      7 focus on the data at hand, when, in fact, I mean in      8 trivial manner, arguably most of the questions we      9 want to ask, we don't have great data for. And      10 it's probably for good reason.</p> <p>11 Because a lot of -- you know, there's,      12 you know, all sorts of things I'd like to study,      13 which would mean a enormous -- a violation of, you      14 know, person's privacy, person's, you know,      15 personal life. And at the end of the day, you      16 know, certain fields where that's highly recognized      17 or -- you know, medicine and whatnot.</p> <p>18 And for social scientists, it's always      19 the default, that, you know, sometimes if there's a      20 very important public policy question, you look for      21 creative ways to get data. But certainly the --      22 the vast array of human affairs, you know, social</p>

<p style="text-align: right;">Page 22</p> <p>1 scientists don't always have that luxury of being 2 able to treat somebody like an experiment or petri 3 dish --</p> <p>4 Q Right</p> <p>5 A -- or invade their lives to get whatever 6 information they'd like.</p> <p>7 Q Have you ever conducted a study where you 8 didn't have the data points you wanted so you 9 theorized or had to theorize based on the data you 10 did have?</p> <p>11 A So all studies involve theorizing. And I 12 think it's -- you theorize sometimes with better 13 evidence and data to support you, sometimes with 14 less evidence.</p> <p>15 So I'd say a theory is a -- a theory is 16 always there. You know, there's always a question 17 of reasoning within the -- you know, best evidence 18 you have, both theoretical inferences and 19 speculations as well as, you know, data that may or 20 may not, to some different degrees, be relevant to 21 some underlying question.</p> <p>22 Q How many currently outstanding or</p>	<p style="text-align: right;">Page 24</p> <p>1 professor. It gets online into our site. And we 2 can send it out to them on their behalf.</p> <p>3 I'm a member -- the Senate confirmed me 4 this summer to serve on the National Endowment for 5 Humanities. So we have three meetings a year for 6 that. I think that's -- and then -- yeah, those 7 would be the core professional --</p> <p>8 Q Sure.</p> <p>9 A -- activities that I engage in.</p> <p>10 Q What do you -- what do you teach as an 11 assistant professor at Georgetown?</p> <p>12 A So we have an undergrad core course for 13 our business MB -- or our business undergrad 14 students. The title is now called Ethical Values 15 of Business: Politics, Regulation, and Corporate 16 Governance. And later this fall, in our second 17 mod, I'll also be teaching an MBA course, for our 18 second-year MBAs, on principal leadership.</p> <p>19 Q And the -- the first class you mentioned, 20 not the -- not the MBA course --</p> <p>21 A Right.</p> <p>22 Q -- the first class, is that for undergrad</p>
<p style="text-align: right;">Page 23</p> <p>1 incomplete -- incompletely research projects are you 2 working on now, if you know?</p> <p>3 A Oh, well, I'll -- I'll interpret the term 4 "projects" here widely. So, you know, there are 5 things that I'd like to write some day, things that 6 I have a paragraph on, there are things that are 90 7 percent written. I'd say there's -- is at least a 8 dozen papers that I'm working on that are in 9 various degrees of completion, and at least two 10 book projects that are in different degrees of 11 completion.</p> <p>12 Q And do you -- other than your research 13 work right now, do you have any other current jobs?</p> <p>14 A The -- so my -- my primary job, I'm a 15 professor -- assistant professor at Georgetown 16 University. The -- I run a very small business. 17 Business is an exaggeration, because it doesn't 18 really make money. But an online dossier service 19 for academics.</p> <p>20 So that would -- so, for example, if 21 somebody has confidential letters of 22 recommendation, they can solicit that from the</p>	<p style="text-align: right;">Page 25</p> <p>1 students?</p> <p>2 A That is. Yes.</p> <p>3 Q Okay. And real generally --</p> <p>4 A Uh-huh.</p> <p>5 Q -- can you give me a few sentence, one 6 sentence, three thousand foot flyover, as to what 7 material you cover in that undergrad class?</p> <p>8 A Yeah, so --</p> <p>9 Q And I promise I won't provide this to 10 your students to present --</p> <p>11 A Oh, I can --</p> <p>12 Q -- if there's any --</p> <p>13 A -- as -- I could give you 12 hours of the 14 summary.</p> <p>15 Q Not looking for that.</p> <p>16 MR. CHUCK COOPER: Nor is counsel.</p> <p>17 MR. DAVIS COOPER: Nor counsel.</p> <p>18 THE WITNESS: So the course thinks about 19 the relationship between economics and politics at 20 the highest level. We consider problems of 21 collective action, problems that occur within the 22 firm, the problems that occur within the larger</p>

<p>1 society.</p> <p>2 So we examine a variety of corporate</p> <p>3 failures. We look at regulatory approaches to try</p> <p>4 to deal with that. We look at also issues within</p> <p>5 firms, how you motivate, manage, surveil people.</p> <p>6 We look at a variety of whistleblower programs,</p> <p>7 ways to try to increase ethical accountability. We</p> <p>8 deal some, near the end of the course, with</p> <p>9 contemporary policy debates, about the business and</p> <p>10 place in society, some questions of, you know, use</p> <p>11 of digital technology, use of data.</p> <p>12 So it's -- it's, generally speaking, I</p> <p>13 think of it as a business ethics course, but which</p> <p>14 cashes out in a variety of particular theoretical</p> <p>15 controversies and dilemmas in -- in economics and</p> <p>16 political science and -- and issues of regulation.</p> <p>17 Q And have you started teaching this</p> <p>18 semester --</p> <p>19 A I have --</p> <p>20 Q -- yet?</p> <p>21 A -- yes.</p> <p>22 Q Okay. Are you teaching mostly the</p>	Page 26	Page 28
<p>1 economics majors?</p> <p>2 A So they're actually business school --</p> <p>3 they -- our students will apply to the business</p> <p>4 school when they go to Georgetown. So they'll --</p> <p>5 they'll be business school students who might be</p> <p>6 majoring in a variety of finance, accounting,</p> <p>7 although we do allow students to enroll in the</p> <p>8 college, so I will have some government majors,</p> <p>9 some economic majors and that sort of thing.</p> <p>10 Q Any law taught in that course?</p> <p>11 A Yes. I mean we -- we go over a variety</p> <p>12 of, you know, regulatory -- well, a history of</p> <p>13 certain regulations. And we'll -- we'll read a --</p> <p>14 some cases, and so there -- there is some law</p> <p>15 taught.</p> <p>16 Q Okay. I want to turn back to your 12 or</p> <p>17 so outstanding research projects, for a little bit</p> <p>18 of follow-up questions.</p> <p>19 Are you currently researching the impact</p> <p>20 of firearms laws in the United States at all?</p> <p>21 A Yeah. One research project I just</p> <p>22 started -- well, I shouldn't say -- maybe a few</p>	Page 27	Page 29

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1 become less violent? Is it technology? Do we have  
 2 more cameras? So what's responsible for it?  
 3 Because -- I mean one part -- in Pinker's telling,  
 4 he thinks this is --  
 5 MR. DAVIS COOPER: You may want to slow  
 6 the pace --  
 7 THE WITNESS: Ah.  
 8 MR. DAVIS COOPER: -- of your speaking  
 9 down just --  
 10 THE WITNESS: I'm sorry.  
 11 MR. DAVIS COOPER: -- a bit.  
 12 THE WITNESS: It got me excited.  
 13 MR. DAVIS COOPER: She's gotta get every  
 14 word you say and it's --  
 15 THE WITNESS: Right.  
 16 MR. DAVIS COOPER: -- pretty difficult,  
 17 so --  
 18 THE WITNESS: Yes.  
 19 So the question is, what explains this.  
 20 And Pinker identifies a variety of things. But in  
 21 Pinker's telling, he thinks this is a -- a product  
 22 of a variety of cultural forces and economic

Page 32

1 Q So your current work or study in the  
 2 concealed carry is, this is kind of as an off-shoot  
 3 of that larger question, potentially?  
 4 A It is. And -- and just tangentially,  
 5 it's -- it's also a project which I only want to be  
 6 working on after I've received tenure, because of  
 7 the potential -- you know, it's something which,  
 8 you know, as you know, is a -- a thing in which  
 9 some people find controversial to work on. People  
 10 have partisan interest on it.  
 11 So, you know, it -- it was -- you know,  
 12 plenty of people kinda would say, you know, nod and  
 13 wink, you don't work on something this  
 14 controversial until you've got a tenure.  
 15 So I -- I'm very much, you know, you  
 16 might say, you know, kind of self-sensitive on that  
 17 to say it's a long-standing interest, but I -- I  
 18 can't really touch this until -- in a big way until  
 19 I know I have like a protection for it. If  
 20 somebody gets mad at it, I don't need to worry  
 21 about it.  
 22 Q Has anyone at Georgetown -- in the

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1 conditions that really were kind of: We can coast  
 2 and things are gonna just increasingly get better.  
 3 And I'd say critics of Pinker's say, well, maybe  
 4 not; things could get more violent.  
 5 And I thought even since the book's come  
 6 out, I think that there's been, you know, a variety  
 7 of things around the world -- terrorist attacks --  
 8 that have made people question, you know, what are  
 9 the sources of violence, what are the criminal  
 10 technologies, the social conditions, the economic  
 11 conditions.  
 12 So I'd -- I'd this is a big question the  
 13 social scientists, a lot of people, write about and  
 14 think about. And, you know, the United States --  
 15 you know, obviously this is a hot button issue to  
 16 deal with all the Second Amendment stuff, but it  
 17 strikes me as there are these, you know, historical  
 18 debates. People are very partisan on every side  
 19 about this.  
 20 But if you could actually do really good,  
 21 you know, really detailed data doing work on this,  
 22 I think it could make a contribution, so --

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1 Georgetown administration expressed that opinion to  
 2 you directly?  
 3 A They don't know about my interests in  
 4 that, so no, they haven't.  
 5 Q Who funds that research project that  
 6 you're working on?  
 7 A So right now -- so -- so Georgetown  
 8 itself provides us with a -- a research budget.  
 9 And the -- at this point, the -- as far as the  
 10 research I've done, has come out of my Georgetown  
 11 budget, there -- I've mentioned this, however, to  
 12 other people.  
 13 And so there are -- like we had -- the  
 14 last spring at Georgetown, I had -- two of my  
 15 students in my fall class were research assistants  
 16 for me, so -- and these are Georgetown-funded. So  
 17 on -- you know, I would tell it -- at one point I  
 18 told them I'd like to look up some of these  
 19 numbers, you know, state by state in concealed  
 20 carry. And we ran out of time, but had some of  
 21 them do that.  
 22 I had mentioned this summer to some other

<sup>Page 34</sup>  
 1 students, you know, I'm interested in looking at  
 2 this. And one of those students did begin to -- to  
 3 help me look up some of these numbers. But the --  
 4 as far as my own research on this, it's entirely  
 5 Georgetown-funded.

6 Q Okay. What type of data -- what type of  
 7 data are you pulling with respect to the concealed  
 8 carry --

9 A Oh, yeah.

10 Q -- issue at this point that --

11 A Yes, it -- briefly, to give you the  
 12 overview of this. It -- the way a lot of people  
 13 have conceptualized the analysis of these laws is  
 14 you either have a state that's pro carry or anti  
 15 carry. So the way I think puts into, it's either a  
 16 zero or a one.

17 And one thing that struck me as odd is  
 18 when you actually look -- like a state like  
 19 Massachusetts, it's not a -- it's -- it's not a  
 20 shall carry state, so it has relative -- you know,  
 21 it's counted as a zero. But if you look at the  
 22 numbers, it's actually a remarkably high percentage

<sup>Page 35</sup>  
 1 of the population has concealed carry permits.  
 2 Because, you know, all the people in mid -- middle  
 3 Massachusetts, western Massachusetts, they're a --  
 4 I -- I forgot how it works in Massachusetts, but I  
 5 believe there's some local discretion by sheriffs  
 6 or something like that.

7 So I -- I'm not gonna remember the number  
 8 off the top of my head, but I wanna say something  
 9 like 6 or 8 percent of the population concealed  
 10 carry permits in Massachusetts.

11 And it occurred to me what would be a  
 12 more rigorous econometric setup is if you can go  
 13 state -- state by state and not only look at  
 14 numbers of permits or percentage of the population  
 15 with permits, but also look at over years how those  
 16 have changed. Because econometrically, you want  
 17 variation, is what helps you, you know, essentially  
 18 estimate how these changes might work on those  
 19 changes.

20 So the -- what I'd like to do at some  
 21 point is look at all the 50 states. And there's  
 22 probably with some of them -- some of them won't

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 1 have these records available. Some of them have  
 2 now so-called -- well, open carry or permitless  
 3 carry. But there's also ways you can impute based  
 4 on states where you do have good data, good  
 5 estimates to those.

6 But the idea is to get state -- year by  
 7 year, state by state concealed carry numbers, which  
 8 will allow you to do just much more rigorous,  
 9 highly powered econometric inference on their  
 10 effects on crime, their effects on suicide, their  
 11 effects on all these sorts of things.

12 Q And just a brief follow-up, you had  
 13 mentioned there is a more recent study covering the  
 14 concealed carry that has, in your mind, too many  
 15 primary flaws.

16 Could --

17 A Yeah.

18 Q -- you tell me what you believe those  
 19 primary flaws are?

20 And let me just add to that.

21 A Yeah.

22 Q I don't know your field, right. So are

<sup>Page 37</sup>  
 1 there any proprietary interests in you testifying  
 2 about noncompleted research that you're concerned  
 3 about? Because if so, we can place this transcript  
 4 under some sort of -- that portion of the  
 5 transcript under confidentiality.

6 A None in that I'm --

7 Q Okay.

8 A -- concerned about.

9 Q Fair enough.

10 A So I mean -- I mean the first -- the  
 11 first flaw, in my mind, is the -- the binary  
 12 coding, wherein it should be feasible to get these  
 13 numbers state by state.

14 And the -- and part of that -- and the  
 15 second flaw is how it -- so there's -- there's a --  
 16 the -- a method he uses in this study that -- to  
 17 put it delicately, it -- it -- it -- it literally  
 18 involves making up data to look like -- so -- so  
 19 you have this question of you try to create  
 20 artificial control states that would mirror the  
 21 states you have data on. And so the -- the  
 22 approach is sometimes called synthetic control

<p><sup>1</sup> analysis.</p> <p><sup>2</sup> Q Uh-huh.</p> <p><sup>3</sup> A And the problem is you're literally <sup>4</sup> fabricating data. So you're saying, you know, <sup>5</sup> suppose we have a date -- a -- a state that looked <sup>6</sup> this much like Massachusetts, this much like New <sup>7</sup> York, this much like California, this much like <sup>8</sup> Maryland. We create this Frankenstein state, and <sup>9</sup> then compare that on average to this state.</p> <p><sup>10</sup> It's -- it's made up data.</p> <p><sup>11</sup> Again, and there are -- there are <sup>12</sup> circumstances where that's entirely appropriate <sup>13</sup> because of limitations on data and the counter <sup>14</sup> factuals you're exploring.</p> <p><sup>15</sup> In my mind, what -- and part of the <sup>16</sup> reasoning pursues that is because of this binary <sup>17</sup> coding. You don't have that much variation. If <sup>18</sup> you're able to get state by state, year by year, <sup>19</sup> then you can do a variety of conduct -- econometric <sup>20</sup> techniques, including one. It's sometimes called <sup>21</sup> differences and differences, where you -- you know, <sup>22</sup> you're able to tell by year difference changes,</p>	<p style="text-align: right;">Page 38</p> <p><sup>1</sup> And it had to do with from assault weapon, assault <sup>2</sup> weapon bans, and mass shootings.</p> <p><sup>3</sup> And I was looking at -- into the paper.</p> <p><sup>4</sup> And -- and they had a statistic on the front page <sup>5</sup> about -- I -- I'm paraphrasing -- something like 76 <sup>6</sup> percent of mass shootings are committed with <sup>7</sup> assault rifles. And that struck me as really -- <sup>8</sup> I -- you know, I -- I know these numbers a little <sup>9</sup> bit. And that couldn't be right.</p> <p><sup>10</sup> So I went and looked at their data. And <sup>11</sup> I ended up emailing them. I said, Can I get your <sup>12</sup> code? And it turns out they had mis-quoted in the <sup>13</sup> datasets that they were -- they were, you know, <sup>14</sup> counting numbers of a -- of assault weapons and -- <sup>15</sup> in fact, they used the term "semi-automatic" as one <sup>16</sup> of their coding things, which meant every <sup>17</sup> semi-automatic pistol in the entire dataset was <sup>18</sup> counted as one of these.</p> <p><sup>19</sup> And so I think I may submit a little -- <sup>20</sup> it turns out when you code it right, there's also <sup>21</sup> some interesting results. And I may write that up <sup>22</sup> now.</p>
<p><sup>1</sup> both in the crime rates and the concealed carry <sup>2</sup> rates.</p> <p><sup>3</sup> And you also have these big <sup>4</sup> discontinuities. When a law is first passed, it <sup>5</sup> allows this. And so I -- in my -- I -- I believe <sup>6</sup> it's a much more rigorous econometric approach that <sup>7</sup> you can employ at a methods level and then also <sup>8</sup> this -- either flubbing the data itself.</p> <p><sup>9</sup> Q Thank you.</p> <p><sup>10</sup> Will this -- this project is -- in your <sup>11</sup> mind, will it result in a scholarly paper or a <sup>12</sup> book?</p> <p><sup>13</sup> A I hope a paper.</p> <p><sup>14</sup> Q Okay. Do you currently have any <sup>15</sup> published writings, finalized research in the areas <sup>16</sup> of gun control, gun laws, or the gun debate?</p> <p><sup>17</sup> A I have not published anything that -- <sup>18</sup> that primarily looks at that. There is -- there's <sup>19</sup> at least one other project I -- I -- I was telling <sup>20</sup> you when I was doing a lit review, I came across a <sup>21</sup> recent study -- just came out last year -- by some <sup>22</sup> people at NYU, in a surgery journal of all places.</p>	<p style="text-align: right;">Page 39</p> <p><sup>1</sup> Q Okay.</p> <p><sup>2</sup> A And so I have a draft of that. I haven't <sup>3</sup> submitted that. And, again, I -- my hope and plan <sup>4</sup> right now is really to not have any of this stuff, <sup>5</sup> you know, out in the public until I'm post tenure <sup>6</sup> review. And so that's been a part of the <sup>7</sup> consideration.</p> <p><sup>8</sup> Q When is tenure review?</p> <p><sup>9</sup> A Oh, I'm prob -- probably two years away.</p> <p><sup>10</sup> Q Okay. And not to backtrack too far, but <sup>11</sup> I just wanted to close the loop on --</p> <p><sup>12</sup> A Uh-huh.</p> <p><sup>13</sup> Q -- the concealed carry research.</p> <p><sup>14</sup> Who was the author of the article that <sup>15</sup> you found two inherent flaws in?</p> <p><sup>16</sup> A Oh, John Donohue at Stanford. He might <sup>17</sup> have co-authors, but I remember him --</p> <p><sup>18</sup> Q Okay.</p> <p><sup>19</sup> A -- as the first one on the paper.</p> <p><sup>20</sup> Q Okay. Thank you.</p> <p><sup>21</sup> MR. DAGUE: Mark this as "número dos."</p> <p><sup>22</sup> (Defendants' Deposition Exhibit No. 2</p>

<p>1 marked for identification.)</p> <p>2 BY MR. DAGUE:</p> <p>3 Q Dr. English, I've just handed you what</p> <p>4 has been marked for this deposition as Defendants'</p> <p>5 Exhibit 2.</p> <p>6 While you're reviewing that, I'm just</p> <p>7 going to, for the record, state this is a copy of</p> <p>8 what I believe to be Dr. English's CV provided to</p> <p>9 me by counsel during the discovery -- the expert</p> <p>10 discovery phase.</p> <p>11 Just ask you to take two seconds to</p> <p>12 review that. I'm not gonna ask you too much about</p> <p>13 it, but general questions about it.</p> <p>14 MR. DAGUE: And also, just note for the</p> <p>15 record -- my apologies -- the original sticker copy</p> <p>16 of this is not the one that we'll use for the</p> <p>17 original deposition. I've written on the original</p> <p>18 by accident. So if anyone's comparing this in the</p> <p>19 future, that bears a photocopied sticker of</p> <p>20 Defendants' Exhibit 2.</p> <p>21 BY MR. DAGUE:</p> <p>22 Q Dr. English, are you familiar with this</p>	<p style="text-align: right;">Page 42</p> <p>1 A Okay.</p> <p>2 Q Have you received any formal legal</p> <p>3 training in your educational background?</p> <p>4 A I don't have a JD. I was the head TA for</p> <p>5 a constitutional law course that we taught at Duke.</p> <p>6 There's a professor -- Erwin Chemerinsky -- that</p> <p>7 I'm told is a leading constitutional law scholar.</p> <p>8 So I meet with Erwin regularly, and, you know, sat</p> <p>9 through his courses, administered his exams, all</p> <p>10 his lectures.</p> <p>11 So, yeah, spent a lot of time thinking</p> <p>12 about constitutional law in the context of Erwin's</p> <p>13 instruction.</p> <p>14 Q Were you --</p> <p>15 A But --</p> <p>16 Q Sorry.</p> <p>17 A Yeah.</p> <p>18 Q Were you --</p> <p>19 A But I wasn't a -- I was not enrolled in</p> <p>20 the Duke JD program.</p> <p>21 Q Were you a TA then in your undergrad</p> <p>22 years?</p>	<p style="text-align: right;">Page 44</p>
<p>1 document?</p> <p>2 A Yes.</p> <p>3 Q And what is this document?</p> <p>4 A This is my CV.</p> <p>5 Q And does this CV include an accurate</p> <p>6 description of your education?</p> <p>7 A Yes.</p> <p>8 Q And do you -- well, could you briefly</p> <p>9 summarize your education?</p> <p>10 A Sure. I was an undergrad at Duke</p> <p>11 University, got a BA in mathematics, a BS in the</p> <p>12 economics, graduated with distinction in economic</p> <p>13 (sic), wrote a thesis, went to Oxford, did a</p> <p>14 master's program in ethics, returned to Duke, did a</p> <p>15 MA and Ph.D. in political science.</p> <p>16 My two -- we had to pick subfields, so I</p> <p>17 did both -- what's sometimes called methodology,</p> <p>18 and political theory. And we had a sub</p> <p>19 concentration, political economy. Then got my Ph.D</p> <p>20 in 2010. And I can go through professional stuff,</p> <p>21 too, if you like.</p> <p>22 Q No, that's fine.</p>	<p style="text-align: right;">Page 43</p> <p>1 A No.</p> <p>2 Q That was in your --</p> <p>3 A This is in grad school.</p> <p>4 Q This is at --</p> <p>5 A It was --</p> <p>6 Q -- where Duke --</p> <p>7 A -- at the -- this was in grad school as a</p> <p>8 Ph.D. student.</p> <p>9 Q How long did you serve as Professor</p> <p>10 Chemerinsky's head TA?</p> <p>11 A I believe that was in the fall. Let's</p> <p>12 see. It might actually be here somewhere.</p> <p>13 (Witness looked at document). Yeah, it</p> <p>14 was spring of 2008.</p> <p>15 Q Okay. And that was -- well, what class</p> <p>16 was that? Do you remember the title of the class?</p> <p>17 A Yeah, we called it, Liberty, Equality,</p> <p>18 and the American Constitution.</p> <p>19 Q Was it a first-year of constitutional law</p> <p>20 class, or an upper level common law class?</p> <p>21 A The -- so it was not a -- it was taught</p> <p>22 jointly with the political science department, so</p>	<p style="text-align: right;">Page 45</p>

<p style="text-align: right;">Page 46</p> <p>1 it was a -- a class that was made available to 2 undergrads. We had some grad students who would 3 take it. 4 Q So this was not a class in law school, 5 this was in the -- this was affiliated with the 6 poli-sci department? 7 A Right. We actually used the same text 8 and syllabus, but -- 9 Q And was -- at the time, was Professor 10 Chemerinsky a law professor? 11 A He was, right. 12 Q Would you say that that work as a TA with 13 Professor Chemerinsky in that class is your only 14 exposure to legal training? 15 A It depends exactly what you mean by legal 16 training. The -- so, you know, I -- I'm a -- a 17 political scientist by training. We obviously 18 spend a lot of time thinking about the history of 19 American political thought, about -- debates around 20 the constitution about the origins of judicial 21 review. 22 Again, that's -- these are what I'd</p>	<p style="text-align: right;">Page 48</p> <p>1 A -- with regard to constitutional debates, 2 both at their founding and as well as some of their 3 history and development. 4 Q Right. But do you hold yourself out as 5 an expert for hire in issues of constitutional law? 6 A I don't really hold myself out for an 7 expert in hire in -- I -- I -- and since I don't 8 have any website advertising the -- you know, 9 anything like that, the -- I would think it -- 10 well, no, I've never advertised myself as a 11 constitutional law expert. 12 Q Do you consider yourself qualified as an 13 expert to opine upon issues of constitutional law? 14 A I do think I'm qualified to opine about 15 issues of let's say constitutional reasoning. 16 And I mean some sense, you know, you 17 know, the con -- you know I was just at these -- I 18 was just at this confirmation two days ago where we 19 had a very eloquent speech by the director of the 20 National Endowment for the Humanities, calling, as 21 part of their founding documents, you know, the 22 Constitution is the heritage of everyone in the</p>
<p style="text-align: right;">Page 47</p> <p>1 say -- you know, courses that are -- and ideas 2 foundational for law. I -- I had not taken the 3 standard contracts course or the -- I -- I think a 4 lot of technical minutia at Harvard. I spent five 5 years at Harvard's ethics center. And we were 6 actually located administratively under the law 7 school. 8 So my boss is a guy named Larry Lessing, 9 who -- and the -- I was actually technically a 10 lecturer at Harvard Law School when I co-taught a 11 course with Larry. And there were -- you know, 12 I -- I think I would do a variety of activities, 13 but the Harvard Law School, and some seminars and 14 stuff like that. 15 But the -- this -- I would not consider 16 myself a lawyer. And -- and I'm sure there's many 17 minutia areas of the law that you would not want me 18 doing your housing contract. 19 Q Do you consider yourself an expert in 20 constitutional law? 21 A I'd consider myself informed -- 22 Q Uh-huh.</p>	<p style="text-align: right;">Page 49</p> <p>1 United States. 2 And, you know, as somebody who spent much 3 of his certainly graduate career in dealing with 4 history of the American political development, I -- 5 I -- I would say I'm informed enough about the 6 Constitution to at least reflect on its, you know, 7 principles and its -- its relationship to a variety 8 of American -- both, you know, legal and political 9 debates. 10 Q But just to be clear, you testified that 11 you've never taken a formal law class, I think you 12 said in contracts. 13 Have you ever taken a formal law class in 14 basics of constitutional law? 15 A I've only been a TA. I haven't been a 16 student in it. 17 Q Okay. I asked you about whether you 18 consider yourself an expert in constitutional law. 19 And you said you'd consider yourself to be an 20 expert in constitutional reasoning. 21 Could you articulate that distinction -- 22 A Yeah.</p>

<p>1 Q -- for me a little bit better?</p> <p>2 A Sure. So -- so at Harvard -- Harvard has</p> <p>3 a program in constitutional government, run by</p> <p>4 Harvey Mansfield there. And the -- it is, I would</p> <p>5 say, one of the major sub area -- one of the major</p> <p>6 sub fields of American politics, which is one of</p> <p>7 the four main sub fields of political science, is</p> <p>8 what's sometimes called American political</p> <p>9 development and constitutional studies. And that</p> <p>10 has been a major interest of mine.</p> <p>11 And -- and it's a question of -- first,</p> <p>12 as a political question, which are what are the</p> <p>13 aims of the Constitution and it's, you know,</p> <p>14 founding configuration and the ideals that animated</p> <p>15 it, what were the nuances administratively that it</p> <p>16 set up in how government should function and work.</p> <p>17 There's also a history to how it developed, how did</p> <p>18 our -- we get our amendments, what was the impacts</p> <p>19 of different amendments, how those've been</p> <p>20 interpreted.</p> <p>21 So these matters of -- of both</p> <p>22 theoretical reasoning and argument, these matters</p>	<p style="text-align: right;">Page 50</p> <p>1 Q So just to delve a little bit deeper into</p> <p>2 that. The last thing you said is there are some</p> <p>3 subparts of constitutional law that certainly you</p> <p>4 don't consider yourself to be educated or an expert</p> <p>5 in; is that fair, a fair character --</p> <p>6 A I didn't say educated. I said an ex --</p> <p>7 I -- there are issues on -- you know, there are --</p> <p>8 I'd say issues on Fourth and Fifth Amendment</p> <p>9 questions that I know are extremely complex, legal</p> <p>10 histories behind them. And, you know, there are</p> <p>11 other people I would refer you to if you wanted</p> <p>12 a -- a thoughtful opinion on that. There's a --</p> <p>13 other areas that I think have been pretty central</p> <p>14 to my interests.</p> <p>15 Q Is it fair to say that you have more of a</p> <p>16 generalized policy knowledge of the Constitution,</p> <p>17 but if you delve into perhaps the nitty-gritty of</p> <p>18 what is taught in a constitutional law class,</p> <p>19 that's where you may not have as much familiarity?</p> <p>20 And I am happy to --</p> <p>21 A That --</p> <p>22 Q -- give you an example, if it makes it</p>
<p>1 of -- of history and development, are certainly</p> <p>2 within the wheelhouse of political science.</p> <p>3 They're certainly things that myself and -- and my</p> <p>4 teachers have been very interested in. And I'm</p> <p>5 aware there's -- there's plenty of practitioners</p> <p>6 in, you know, legal fields that have a variety of</p> <p>7 sub interests and expertise and -- and bill for</p> <p>8 that, depending on those levels of expertise.</p> <p>9 My interests in the Constitution have</p> <p>10 always been, I'd say, scholarly interest, interest</p> <p>11 in their principles, interest in their</p> <p>12 implications, interest in their -- in the relevance</p> <p>13 to policy. So I'm sure there's some sub areas of</p> <p>14 constitutional law and interpretation that -- that</p> <p>15 I would not be qualified to think about. But there</p> <p>16 are many that -- that actually are -- are very, you</p> <p>17 know, serious and long-standing interest to me.</p> <p>18 MR. DAGUE: Just off the record for a</p> <p>19 second.</p> <p>20 (Discussion off the record)</p> <p>21 MR. DAGUE: Back on the record.</p> <p>22 BY MR. DAGUE:</p>	<p style="text-align: right;">Page 51</p> <p>1 easier to answer.</p> <p>2 A Sure. Why don't you give an example?</p> <p>3 Q Okay. So if -- if I were to ask you</p> <p>4 whether you consider yourself an expert in the</p> <p>5 levels of scrutiny that the Supreme Court has</p> <p>6 applied to various fundamental rights, would that</p> <p>7 be something you could -- you know and are</p> <p>8 comfortable with?</p> <p>9 A Yeah, I had to teach that --</p> <p>10 Q Okay.</p> <p>11 A -- for Chemerinsky all the time.</p> <p>12 Q Okay. So --</p> <p>13 A Umm --</p> <p>14 Q Sorry. Don't mean to cut you off --</p> <p>15 A Yes.</p> <p>16 Q -- on that. Go ahead.</p> <p>17 A So -- so that -- but I'm -- there have --</p> <p>18 I'm sure there's -- the more I learn about any</p> <p>19 academic field is the more proliferation of sub</p> <p>20 fields and sub areas. And so something like levels</p> <p>21 of judicial review, yeah, that's standard stuff.</p> <p>22 Q Okay.</p>

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1 A But I -- I'm -- I'm -- I'm sure there are  
 2 some subspecialties, some areas, that I'm not an  
 3 expert in.  
 4 Q Fair enough.  
 5 Are there any other types of law other  
 6 than constitutional law that you consider yourself  
 7 to have the same level of expertise in as  
 8 constitutional?  
 9 A No, although I studied a lot of D.C.  
 10 permitting process, but --  
 11 Q Do you regularly conduct legal research  
 12 as part of your professional scholarly research  
 13 work?  
 14 A I -- I collaborated with Larry Lessig on  
 15 some projects that might touch on legal research.  
 16 But now, no, there's no longer, you know --  
 17 Q Have you ever formerly opined on any  
 18 scholarly work or in a capacity as an expert as to  
 19 the constitutionality of a law or regulation?  
 20 A Not in detail.  
 21 Q Would you consider that type of an  
 22 opinion to be within your field or degree or area

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1 know, currently have inherited on some of these  
 2 issues.  
 3 Q And just let me dig a little bit deeper  
 4 on that.  
 5 Would that be -- would that constitute  
 6 case law research or general kind of Google  
 7 searching for more general concepts of the law,  
 8 status of the law?  
 9 A Yeah, I didn't crack open my old case law  
 10 book with -- that Erwin had given me, but the --  
 11 I'd say, you know, Google may -- may make light of  
 12 it, but you can -- you can read -- actually access  
 13 quite a bit on Google these days.  
 14 So yes, I -- I looked into -- and I think  
 15 I even cite, you know, this -- this important  
 16 decision from the '70s, thinking about the -- also  
 17 these issues of how -- how can groups be suspected  
 18 or scrutinized, be singled out as a group, which,  
 19 you know, relates a little to the privacy but also  
 20 it relates to all sort of issues of, you know,  
 21 people's prerogatives against -- under search and  
 22 seizure.

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1 of expertise?  
 2 A I certainly think someone who has a Ph.D  
 3 in political science who has, you know, studied and  
 4 thought deeply about the Constitution, its origins,  
 5 its history, its development, could opine with some  
 6 expertise and knowledge about certain areas.  
 7 Q As part of your preparation for issuance  
 8 of the expert report in this case --  
 9 A Uh-huh.  
 10 Q -- Defendants' Exhibit 1, did you conduct  
 11 any legal research into the subject areas that you  
 12 opined upon in this case?  
 13 A Yeah, so I -- I went back and, you know,  
 14 on the issues of scrutiny, you know, wanted to  
 15 think about how this stuff has been looked at in  
 16 the past, certainly issues of privacy also, the --  
 17 there's always the hot social debates in some forms  
 18 these days.  
 19 But, yeah, I -- I did spend some time  
 20 looking up some of the more recent history of some  
 21 of the cases and decisions that had guided just  
 22 the -- the standards which seem -- we seem to, you

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1 And so, yeah, I -- I -- in the scholarly  
 2 manner that I would for a lot of other research, I  
 3 went online and made -- and -- and tried to make  
 4 sure I was informed of some of the -- the latest --  
 5 Q Sure.  
 6 A -- developments and arguments in these  
 7 areas.  
 8 Q Did you conduct Lexis or Westlaw-type  
 9 searches for this project?  
 10 A There were a -- just two or three  
 11 Lexis-Nexis-type searches, yeah.  
 12 Q Now, you said a minute ago -- I just want  
 13 to circle back.  
 14 MR. DAGUE: And, Barbara, I promise we're  
 15 getting towards a break.  
 16 BY MR. DAGUE:  
 17 Q Did you conduct the Lexis or Westlaw  
 18 searches, or was that done by a TA or someone else?  
 19 A The -- I -- at one point, there was a --  
 20 I had a -- a research assistant, an undergrad  
 21 actually, that helped me look up some of the --  
 22 some of the historical cases.

<p style="text-align: right;">Page 58</p> <p>1        But the -- yeah, at least -- and I can      2 think of at least two occasions where I tried to      3 search at my house. But I couldn't get in because      4 I wasn't on -- I -- I wasn't on the -- the virtual      5 private network, so I had to go back to campus to      6 complete my search so I could actually view.      7        Q   So that research system helped you on      8 this project?</p> <p>9        A   It actually -- it -- it wasn't in the      10 context of this -- I -- I hadn't brought the      11 research assistant on for this project. It was      12 somebody who had access to a library at one point.      13        Q   You did mention at one point that -- a      14 few minutes ago that you have some expertise or at      15 least have studied the D.C. permitting process.      16        A   Yeah.      17        Q   Is that -- is that what you testified to?      18        A   Yeah, that -- that was said somewhat in      19 gist about areas of legal expertise. I -- I have      20 spent an inordinate amount of time -- I had      21 somebody come -- just look -- just small      22 construction projects on my house, so -- I -- I</p>	<p style="text-align: right;">Page 60</p> <p>1 important people have often been wrong about      2 things.      3        And so I've always thought of myself as      4 somebody who wants to bring, you know, the most      5 rigorous arguments, do the most background      6 research, and be part of a conversation. I would      7 say I have a -- an interest in Second Amendment      8 law. And I've read a lot about it. I thought      9 about it in the context of Erwin Chemerinsky's      10 course a few years ago. It's an area of interest.      11        I don't know if -- if you -- if people      12 give out licenses to be experts in the Second      13 Amendment law. I'm certain there are people who      14 are more expert than I am who, you know, are -- are      15 more familiar with the -- the case law development,      16 its background, but it's certainly an area that I      17 have, I'd say, a -- a both interest and extensive      18 reading and familiarity with.      19        Q   Okay. And I may have asked you this in      20 different terms, but have you ever been retained as      21 an expert or to provide an expert-type opinion,      22 other than this case, on the Second Amendment or an</p>
<p style="text-align: right;">Page 59</p> <p>1 meant that partially in gist.      2        Q   Okay. So -- okay.      3        A   Yeah. And by permitting there, I meant      4 construction permits.      5        Q   Construction permit, yes. I just wanted      6 to follow up.      7        MS. CONNELL: Much more complex.      8        THE WITNESS: Yeah. Yeah.      9 BY MR. DAGUE:      10        Q   Do you consider yourself to be an expert      11 in Second Amendment law specifically?      12        I know I asked you about constitutional      13 generally. I want to just hone in on Second      14 Amendment.      15        MR. DAGUE: And Barbara, I promise we're      16 getting towards a break.      17        THE WITNESS: So I may have to ask you to      18 define your meaning of expert. And I'll -- I'll      19 just preface this by saying part of my interest in      20 social science has been a skepticism, at least      21 within Ph.D. social scientists, of various claims      22 to expertise where, you know, very informed,</p>	<p style="text-align: right;">Page 61</p> <p>1 issue that abuts the Second Amendment?      2        A   So I have -- I have not been retained      3 specifically to be a -- a Second Amendment expert.      4 I have, however, offered expert witness in cases I      5 think that deal with issues related to the Second      6 Amendment.      7        Q   All right. That's a good stopping point.      8 We'll get into that.      9        MR. DAGUE: Five, ten minutes.      10        (Recess)      11        MR. DAGUE: Back on the record.      12 BY MR. DAGUE:      13        Q   All right, Dr. English, we ended the --      14 right before our last break, we started talking      15 about prior expert service. And I'd asked you      16 about prior expert service into Second Amendment --      17 cases involving the Second Amendment.      18        And I believe you testified that you do      19 have some prior expert -- or expert testimony in      20 those fields, although not directly related to the      21 Second Amendment; ask that fair?      22        A   That is correct. What I was asked to</p>

<p style="text-align: right;">Page 62</p> <p>1 opine on was not specifically a legal question. It 2 was, I'd say, data questions. 3 Q Okay. And was one of those matters a 4 California case recalled Rupp versus Becerra? 5 A That is correct. 6 Q And did you serve as a paid expert in 7 Rupp versus Becerra? 8 A No. 9 Q No? Did you serve as an expert? 10 A I did, yes. 11 Q And were you not paid? 12 A That's correct. 13 Q That was a volunteer pro bono expert? 14 A Yeah, so my -- I had been nominated for 15 this position which required Senate confirmation. 16 And there's a very extensive, elaborate financial 17 disclosure process. And I turned in my forms. And 18 at that point, would require getting them back from 19 the Senate committees. And it would have set 20 things back six months. 21 So the -- the question in that case was 22 actually a very -- a very narrow and specific one</p>	<p style="text-align: right;">Page 64</p> <p>1 gun advocacy organizations? 2 A I don't recall. I -- I don't recall. 3 Q In that case, were you contacted by 4 counsel to serve -- a counsel to serve as an 5 expert, or were you contacted by an organization? 6 A I was contacted by counsel. 7 Q And it was not counsel -- either of the 8 Coopers, correct? 9 A It was not either of the Coopers. 10 Q Was it -- well, who was the counsel, if 11 you recall? 12 A I believe it was a counsel in California 13 that had reached out to me. 14 Q I know you didn't charge for that; is 15 that right? 16 A That's correct. 17 Q But did you keep any records as to how 18 much work you did on that, even though you weren't 19 charging? 20 A I did not keep close records on that. 21 Q Can you estimate how much time you spent 22 on that matter?</p>
<p style="text-align: right;">Page 63</p> <p>1 that -- it struck me as not something that would 2 take a lot of time and effort. And so that one, I 3 did not receive, even ask -- even ask for payment, 4 because of the restrictions I had on having any 5 undisclosed financial. 6 Q What was the narrow question, if you 7 recall, in that case? 8 A The narrow question was estimating the 9 number of AR-15 rifles that had been produced and 10 sold in recent years. 11 Q And who -- which side of that case did 12 you serve as an expert on for? 13 A Right. So it was the side challenging 14 the state's ban on these weapons. 15 Q Do you remember, was it an entity or an 16 individual who was challenging the state's ban on 17 those types of weapons? 18 A I -- I don't fully remember. I believe 19 it was a variety. I think it was a number of 20 plaintiffs. 21 Q And were any of those plaintiffs that 22 you -- if you recall, were any of those plaintiffs</p>	<p style="text-align: right;">Page 65</p> <p>1 A Probably 80 hours or so. 2 Q And can you estimate how much you would 3 have charged for those services had you charged? 4 A Oh, so I believe -- this is the first 5 time -- this is the first time I had ever been 6 contacted for a case, so I -- the -- the next -- 7 maybe charged \$250 an hour, so I guess you can do 8 the math on that. 9 Q Sure. 10 Did you issue a report in that case? 11 A I did. 12 Q And was it styled as an expert report? 13 A It was an expert report. 14 Q Did you testify in a deposition in that 15 case? 16 A I did. 17 Q And did you ever have to testify in open 18 court in that case? 19 A No. 20 Q Do you know the status of that case 21 currently? 22 A I don't.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q Do you know if the case is closed?</p> <p>2 Has anyone contacted you to let you know</p> <p>3 that your services are done?</p> <p>4 A I don't believe I've been contacted.</p> <p>5 Q What was your research task in that case,</p> <p>6 if you can summarize it?</p> <p>7 A Specifically to estimate the number of</p> <p>8 AR-15-styled rifles in circulation and, you know,</p> <p>9 using a variety of data sources to try to just get</p> <p>10 some handle of, you know, what a -- I guess these</p> <p>11 are at stake in the case. They want to know how</p> <p>12 many of things are there.</p> <p>13 Q And was it just how many there are in</p> <p>14 California, or nationwide?</p> <p>15 A It was nationwide.</p> <p>16 Q And was there available data points that</p> <p>17 you relied upon in your conclusion?</p> <p>18 A Yeah, so there's -- there's both the</p> <p>19 AMFER -- the American Manufacturer of Firearms</p> <p>20 Report, AMFR, that the BATF collects. And those</p> <p>21 have a variety of, you know year by year, company</p> <p>22 by company, how many pistols, how many rifles,</p>	<p style="text-align: right;">Page 68</p> <p>1 A So, you know, estimates had to be -- had</p> <p>2 to -- had to, you know, be made on a few of those.</p> <p>3 But, yeah, the -- I was pretty confident in the</p> <p>4 conclusions I came to.</p> <p>5 Q Did you have to extrapolate from the data</p> <p>6 to come to a conclusion?</p> <p>7 A You might be -- some -- so extrapolation</p> <p>8 can have a very technical meaning. That -- that</p> <p>9 may not be the right term to use here.</p> <p>10 Q Okay.</p> <p>11 A I would say there -- you know, there</p> <p>12 were -- I -- and what was nice about the</p> <p>13 manufacturing data -- and you -- you -- you could</p> <p>14 sometimes have either lower bounds or higher</p> <p>15 bounds. So in all of the -- what I did there, I</p> <p>16 tried to make the most conservative -- which is an</p> <p>17 underestimate -- and there -- you know, I -- it's</p> <p>18 possible there seems to be more than I -- I</p> <p>19 estimated in that.</p> <p>20 But the -- I was -- yeah, I'd say fairly</p> <p>21 confident that it's gonna be in -- you know, within</p> <p>22 the range -- within the, you know, ranges. I'd say</p>
<p style="text-align: right;">Page 67</p> <p>1 either re -- there's some estimation might still</p> <p>2 need be done on sub types.</p> <p>3 There also -- some market research had</p> <p>4 been done by independent people. There's a variety</p> <p>5 of survey things, ask people how many they own of</p> <p>6 these. So there are a variety of data sources that</p> <p>7 you could use to triangulate that and a few</p> <p>8 different means.</p> <p>9 Q And did you find the available data</p> <p>10 compelling?</p> <p>11 A What -- what do you mean by compelling?</p> <p>12 Q Did you find it developed enough to base</p> <p>13 an opinion upon?</p> <p>14 A Yeah, so the -- you know, in -- in the</p> <p>15 social sciences, we often think of, you know, what</p> <p>16 are your margins of error or what are your, you</p> <p>17 know, degrees of uncertainty.</p> <p>18 And what gave me some confidence is that</p> <p>19 using many of these different sources, they were</p> <p>20 all producing numbers that were broadly consistent</p> <p>21 with one another.</p> <p>22 Q Uh-huh.</p>	<p style="text-align: right;">Page 69</p> <p>1 yes in that. And I'd be -- I'd be very, very, very</p> <p>2 surprised if it was below -- significantly below</p> <p>3 what I concluded.</p> <p>4 Q Okay. So -- and, yeah, forgive me for</p> <p>5 maybe not using the right technical terms.</p> <p>6 But in that case, you had some data</p> <p>7 points, but you didn't have a final -- there's no</p> <p>8 final number of these, so you had to -- you had to</p> <p>9 estimate, based on the data points you had, and you</p> <p>10 came up with an estimate; is that right?</p> <p>11 A Yes. And to be clear, the -- I mean I'm</p> <p>12 trying to think of what you might need to compare</p> <p>13 that to.</p> <p>14 I -- I guess the only way to know this</p> <p>15 number is to get every American in the United</p> <p>16 States who own one of these things or multiple of</p> <p>17 these things to, you know, verify publicly under</p> <p>18 oath that they -- this is how many they own. So</p> <p>19 I -- I don't have that, I suppose.</p> <p>20 Q Right.</p> <p>21 So the -- in that case, the actual number</p> <p>22 of AR-15-style weapons, is un -- is immeasurable,</p>

<p>1 fair?</p> <p>2        The actual hard number is immeasurable,</p> <p>3 would require some estimation, right?</p> <p>4        A I would not use the term "immeasurable."</p> <p>5        Q Okay.</p> <p>6        A Because that -- so there -- there's --</p> <p>7 there's a few distinctions you could make. So</p> <p>8 there's a classic distinction, say, in econometrics</p> <p>9 between risk and uncertainty, risk being</p> <p>10 something -- you know, we know there's a 60 percent</p> <p>11 chance this is going to happen. And you can use</p> <p>12 that information. It doesn't mean it's gonna</p> <p>13 happen, but you're able to estimate. Whereas</p> <p>14 uncertainty is you have no idea what the percentage</p> <p>15 is at all.</p> <p>16        And so I -- we're definitely not in a</p> <p>17 position here of uncertainty. It's not -- now, the</p> <p>18 deal is, yes, we're dealing with -- with estimates,</p> <p>19 but they're estimates that are pretty tightly</p> <p>20 bounded, estimates that there's very good evidence</p> <p>21 for. And this is a case of literally everything in</p> <p>22 the social sciences we deal with: Everything is an</p>	<p>Page 70</p> <p>1        A That was this summer.</p> <p>2        Q This summer of 2019, or --</p> <p>3        A Yes, this summer of 2019.</p> <p>4        Q Okay. And can you -- do you remember the</p> <p>5 name of that case?</p> <p>6        A I don't.</p> <p>7        Q Do you remember who retained you?</p> <p>8        A It was Cooper &amp; Kirk.</p> <p>9        Q Okay. Chuck and Davis?</p> <p>10       A No. It was actually Pete.</p> <p>11       Q Okay. Another lawyer with the firm?</p> <p>12       A Another lawyer with the firm.</p> <p>13       Q And do you remember, were you paid for</p> <p>14 that --</p> <p>15       A I was --</p> <p>16       Q -- engagement?</p> <p>17       A -- paid for that. I'd been -- I -- I'd</p> <p>18 been cleared by that point.</p> <p>19       MR. CHUCK COOPER: And just, Counsel, to</p> <p>20 complete the record, it's Pete Patterson, our</p> <p>21 partner here at the firm.</p> <p>22       MR. DAGUE: Thank you.</p>	<p>Page 72</p>
<p>1 estimate.</p> <p>2        Q Right.</p> <p>3        A Everything.</p> <p>4        Q Right. Because in that case, short of</p> <p>5 conducting a personalized census of every American</p> <p>6 in the country that was reliable, certainly you</p> <p>7 could not come up with a -- and even that might not</p> <p>8 be reliable, but --</p> <p>9        A Even our census is based on a variety of</p> <p>10 inferential --</p> <p>11       Q Right.</p> <p>12       A -- conclusions.</p> <p>13       Q So short of going to everyone's home,</p> <p>14 knocking on the door, completing a complete search</p> <p>15 of their home, you need to estimate in that case;</p> <p>16 is that fair?</p> <p>17       A Yes.</p> <p>18       Q Okay. Now, did you serve as an expert</p> <p>19 witness in another case involving firearms in</p> <p>20 Vermont?</p> <p>21       A Yes.</p> <p>22       Q Okay. When was that?</p>	<p>Page 71</p> <p>1 BY MR. DAGUE:</p> <p>2        Q And do you recall the issue that you were</p> <p>3 asked to opine on as an expert in the Vermont case?</p> <p>4        A Yes. It was to understand the commonality</p> <p>5 of ownership of magazines that had been recently</p> <p>6 banned in a -- by a Vermont law. And this law</p> <p>7 permitted magazines to continue to be owned that</p> <p>8 had been purchased before the date that the law</p> <p>9 went into effect.</p> <p>10       And the -- what I was asked to do in this</p> <p>11 case was to estimate how many people in Vermont own</p> <p>12 these. And there's a broader question: Are these</p> <p>13 commonly owned; and how common are they?</p> <p>14       Q Yeah, and maybe I am just not</p> <p>15 understanding.</p> <p>16       And when you say the commonality of</p> <p>17 ownership, does that mean you were asked to est --</p> <p>18 to explore the commonality between owners, or how</p> <p>19 common ownership was?</p> <p>20       A So how common ownership was, because</p> <p>21 that -- you know, you -- you want to both estimate</p> <p>22 how many of these things are owned, but, you know,</p>	<p>Page 73</p>

<p style="text-align: right;">Page 74</p> <p>1 is -- is it a million owned by one person, or is 2 it, you know, owned by this percent of the 3 population. And -- and so I was trying -- the 4 distribution of ownership as well as not always 5 just how many are in circulation.</p> <p>6 Q Do you remember who -- well, do you 7 remember if you served as an expert on behalf of 8 the plaintiff or the defendant in that matter?</p> <p>9 A Right. So this was a -- the people 10 challenging the law in Vermont.</p> <p>11 Q Okay. And do you remember what the 12 Vermont law being challenged dictated?</p> <p>13 A Yeah. So, in brief, it -- it allowed 14 prior ownership, but banned the sale of magazines 15 that -- for pistols, I believe it was 15 or above, 16 or maybe -- maybe above 15; and rifles, it was 17 above 10.</p> <p>18 Q When you say above, you mean the number 19 of --</p> <p>20 A Number of --</p> <p>21 Q -- rounds?</p> <p>22 A -- rounds, yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q Did you issue a report in that case?</p> <p>2 A Yes.</p> <p>3 Q Okay. Did you testify in a deposition in 4 that case?</p> <p>5 A No.</p> <p>6 Q Do you know if -- did you testify in 7 court in that case?</p> <p>8 A Nope.</p> <p>9 Q Do you know if the matter is resolved?</p> <p>10 A I don't know. I don't believe it is.</p> <p>11 Q Okay. And that was just this past 12 summer, so --</p> <p>13 A Yes.</p> <p>14 Q -- a few months ago?</p> <p>15 A Yes.</p> <p>16 Q Okay. In that matter, you have been paid 17 and/or are currently being paid, fair?</p> <p>18 A Yes.</p> <p>19 Q And do you know -- and I won't hold you 20 to a dollar figure -- an estimate of how much 21 you've been paid in that case to date?</p> <p>22 A I -- I wanna say it was around \$20,000.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q All right. Did you issue a report in 2 that case?</p> <p>3 A I did.</p> <p>4 Q Do you remember if the -- you said the 5 party challenging the Vermont law.</p> <p>6 Was that an individual or was that an 7 organization or a collection of the two?</p> <p>8 A Don't recall.</p> <p>9 Q Okay. Do you remember if the NRA or a 10 regionalized or local offshoot of the NRA was 11 associated with or affiliated with the party 12 challenging the Vermont law?</p> <p>13 A I don't know or recall anything about any 14 involvement with the NRA.</p> <p>15 Q Did you -- in your course of retainer and 16 service in that case, did you have any contact with 17 the plaintiffs or the party challenging the law?</p> <p>18 A No.</p> <p>19 Q Is it fair to say that your conversations 20 and activity in the case was through the law firm 21 of Cooper &amp; Kirk then exclusively?</p> <p>22 A Exclusively, yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 Q And in that case, you were asked 2 ultimately to estimate the commonality of ownership 3 of certain magazines; is that -- is that a fair 4 articulation?</p> <p>5 A Yes.</p> <p>6 Q And I'd like to ask you with respect to 7 the California case and the AR-15.</p> <p>8 Was there sufficient data in your mind to 9 arrive at an estimation?</p> <p>10 A I was very -- fairly confident in the 11 estimation arrived at.</p> <p>12 Q What type of data did you use in that 13 case to arrive at that estimation?</p> <p>14 A So I contracted with a professional 15 survey firm to survey residents of Vermont. And 16 they executed the survey. We got a good response 17 rate, and asked survey respondents a variety of 18 questions about, you know, their ownership, and so 19 based the record on those responses.</p> <p>20 Q So was the survey -- in very general 21 terms -- I don't need the specifics of it -- but 22 was it generally geared towards determining if the</p>

<p style="text-align: right;">Page 78</p> <p>1 residents of Vermont owned these particular types 2 of magazines?</p> <p>3 A Yes.</p> <p>4 Q Okay. And again, in that case, you had 5 to -- you had to make some sort of estimation to 6 ultimately arrive at your ultimate conclusion, 7 right?</p> <p>8 A Sure.</p> <p>9 Q Okay. Meaning there was no central 10 repository that you could go on to get a 100 per 11 conclusive determination of how many of those 12 particular magazines were sold and/or owned in 13 Vermont at the time, right?</p> <p>14 A That's right. But I would just point out 15 that having worked also with data maintained by 16 state repositories, I'm not sure I would trust, 17 honestly, the quality of those more than a high -- 18 a high quality survey, so --</p> <p>19 Q Sure.</p> <p>20 A Yes, there's always, you know, a -- 21 there's an inference involved in this reasoning, 22 but it's not, again, that if a state has a</p>	<p style="text-align: right;">Page 80</p> <p>1 personal associations with advocacy groups. 2 Do you currently have any association 3 with a gun advocacy group right now?</p> <p>4 A So when I turned 18, my father gave me a 5 life membership in the NRA, which I assume still 6 works. But to my -- I don't believe I am actively 7 involved in either with them but -- and I can't 8 think of any other agency or activist group.</p> <p>9 Q Okay.</p> <p>10 A I don't recall any others.</p> <p>11 Q Okay. You don't -- do you pay dues 12 currently as a result of that lifetime membership?</p> <p>13 A I do not.</p> <p>14 Q Okay. Do you pay dues to any activist 15 group, Second Amendment or otherwise?</p> <p>16 A I don't believe I do, no.</p> <p>17 Q Are you on any boards of directors?</p> <p>18 A I sit on the board of a nonprofit 19 educational institution in Cambridge, 20 Massachusetts. It sits on the right -- just on the 21 border of Harvard's campus.</p> <p>22 Q What's that called?</p>
<p style="text-align: right;">Page 79</p> <p>1 repository, you're no longer dealing with questions 2 of data integrity or inferential conclusions.</p> <p>3 Q Right. And in that case, you did issue a 4 report that included a conclusion as to how many of 5 these particular magazines you were studying you 6 believed were owned in Vermont, right?</p> <p>7 A That's correct.</p> <p>8 Q Okay. Are those the only two cases that 9 you've served in an expert capacity involving gun 10 issues?</p> <p>11 A Yes.</p> <p>12 Q With the exception of this case --</p> <p>13 A Yeah.</p> <p>14 Q -- currently?</p> <p>15 A Yeah.</p> <p>16 Q Do you have any --</p> <p>17 MR. DAGUE: We can go off the record for 18 one second.</p> <p>19 (Discussion off the record)</p> <p>20 MR. DAGUE: Okay. Back on the record.</p> <p>21 BY MR. DAGUE:</p> <p>22 Q Doctor, I want to ask you about your</p>	<p style="text-align: right;">Page 81</p> <p>1 A It's called the Abigail Adams Institute.</p> <p>2 Q And what does the Abigail Adams Institute 3 advocate for?</p> <p>4 A So they're not an advocacy group. They 5 are an educational group. They -- their -- our 6 main -- well, we do two purposes. One is we try to 7 be a convening place for people who have 8 specialized disciplinary knowledge, to come 9 together and ask big questions. And we also try to 10 supplement the humanistic education of 11 undergraduates in the greater Boston area. So 12 we'll run reading groups and a -- host lectures, 13 summer seminars.</p> <p>14 Q What does humanistic education mean?</p> <p>15 A So humanistic -- think about the 16 humanities, about what it means to be human, about, 17 you know, great question of what makes life worth 18 living, read great texts, Plato and Aristotle and 19 Shakespeare and think about the nature of the human 20 condition.</p> <p>21 Q Uh-huh. You should invite your -- you 22 should have invited them to this eight-hour</p>

<p>1 deposition today.</p> <p>2 A Oh, they would have -- you know.</p> <p>3 Q It's riveting, right?</p> <p>4 MR. CHUCK COOPER: This certainly isn't</p> <p>5 what makes life worth living.</p> <p>6 BY MR. DAGUE:</p> <p>7 Q So lifetime member of the NRA through a</p> <p>8 gift when you were 18, fair?</p> <p>9 A Yes.</p> <p>10 Q Any family members, members of the NRA or</p> <p>11 any Second Amendment advocacy group other than, I</p> <p>12 assume, your father?</p> <p>13 A Yeah, he's -- he's deceased.</p> <p>14 Q Okay.</p> <p>15 A I don't know if he bought one for my</p> <p>16 brother.</p> <p>17 Q Okay.</p> <p>18 A But I'm -- to my knowledge, nobody in my</p> <p>19 immediate family is involved in any of these</p> <p>20 advocacy --</p> <p>21 Q And where are you geographically from</p> <p>22 originally, Doctor?</p>	<p>Page 82</p> <p>1 Columbia; however, I do not own those -- keep those</p> <p>2 firearms in residence here.</p> <p>3 Q Okay. Do you keep them in residence in</p> <p>4 another state?</p> <p>5 A In another state.</p> <p>6 Q Okay. And do you have a permit -- in the</p> <p>7 state that you maintain those firearms, do they</p> <p>8 require a permit for any of those firearms?</p> <p>9 A They do not.</p> <p>10 Q Okay.</p> <p>11 A Which is part of the reason that they're</p> <p>12 there.</p> <p>13 Q Right.</p> <p>14 Are you a hunter?</p> <p>15 A Yes.</p> <p>16 Q Are you a sports shooter?</p> <p>17 A Yes.</p> <p>18 Q Do you consider your ownership of those</p> <p>19 weapons to -- for your purposes as a hunter or a</p> <p>20 sports shooter, or for another purpose?</p> <p>21 A I have also in the past used them for</p> <p>22 defense, home defense, when I lived in different</p>
<p>1 A So I grew up just in Rockville, Maryland,</p> <p>2 just at the end of the Red Line here.</p> <p>3 Q Okay. It's the home of NIH, right?</p> <p>4 A That's right. We've got -- NIH is up</p> <p>5 there and --</p> <p>6 Q Right. Right.</p> <p>7 Setting membership aside, are you a donor</p> <p>8 to any organizations, advocacy organizations?</p> <p>9 A I don't recall any donations that I made.</p> <p>10 Q Any of your immediate family donors to</p> <p>11 any advocacy groups that you know of?</p> <p>12 A Not that I know of.</p> <p>13 Q Do you own a firearm yourself?</p> <p>14 A I do.</p> <p>15 Q Okay. And what type of firearm do you</p> <p>16 own?</p> <p>17 A So I own at least -- I'm trying to</p> <p>18 think -- three pistols, two shotguns, and one</p> <p>19 rifle.</p> <p>20 Q Okay. And are you a resident of the</p> <p>21 District of Columbia or Maryland or Virginia?</p> <p>22 A So I'm a resident of the District of</p>	<p>Page 83</p> <p>1 states.</p> <p>2 Q What do you hunt?</p> <p>3 A Depending on the year and likelihood of</p> <p>4 getting out, deer, waterfowl, small game.</p> <p>5 Q When's the last time you got out?</p> <p>6 A January.</p> <p>7 Q 2019?</p> <p>8 A 2019, yes.</p> <p>9 Q So it's not particularly frequent?</p> <p>10 A Well, hunting season doesn't really --</p> <p>11 hunting season basically ends for almost everything</p> <p>12 in January.</p> <p>13 Q Okay.</p> <p>14 A There's a spring turkey season. But if</p> <p>15 these days things are busy, I might get out two,</p> <p>16 three times a year.</p> <p>17 Q Do you shoot skeet?</p> <p>18 A Years ago I did. I haven't probably for</p> <p>19 a decade now.</p> <p>20 Q Do you have children?</p> <p>21 A No.</p> <p>22 Q Okay. You mentioned having used firearms</p>

<p style="text-align: right;">Page 86</p> <p>1 in home defense situations in the past; is that 2 fair? 3 A Yes. 4 Q And has that been multiple times or just 5 once? 6 A Well, when I lived in states where it was 7 less legally fraught, I would have a firearm 8 available, as it were, you know, in my home -- 9 house. 10 Q Okay. 11 A There was one incident where I actually 12 possessed it and brandished it to somebody who was 13 trying to gain access to my house. 14 Q How long ago was that? 15 A Oh, that would have been probably 11 or 16 12 years ago. 17 Q You said brandished; you didn't have to 18 fire the weapon -- 19 A No. 20 Q -- during that -- 21 Was there an arrest or criminal complaint 22 made as a result of that?</p>	<p style="text-align: right;">Page 88</p> <p>1 A I'm sure, yes. 2 Q Okay. 3 A It might have been phrased different 4 ways, but -- 5 Q Sure. 6 A -- yes. 7 Q Let me ask you this way, just from a kind 8 of vocabulary perspective. 9 If I use the term "the gun debate" to 10 summarize this hotly contested debate with respect 11 to the Second Amendment and gun ownership, is that 12 something you'll understand me to generally mean 13 the -- kind of the immense state of American 14 argument over that issue? 15 A Yes, although I would say that the gun 16 debate probably meant -- means something different, 17 depending on what year you're asking about it. 18 Q Sure. 19 A So there was a gun debate in the '90s. 20 There's been, I'd say, multiple gun debates. And I 21 suppose there's always some gun debate ongoing. 22 Q If I use the term too generally during</p>
<p style="text-align: right;">Page 87</p> <p>1 A Police were called. They recognized the 2 person as somebody who they received other 3 complaints about in the neighborhood. They -- I 4 pointed the direction that he ran. And I don't 5 believe they found him that evening. I know they 6 picked up, over the course of the next few months, 7 two or three people. I don't know if they ever got 8 that guy. 9 Q Okay. Would you agree with me that 10 issues surrounding gun ownership and generally the 11 Second Amendment have become hotly contested in 12 America over the last 10, 15 years? 13 A Yes. 14 Q Would you agree with me that I guess even 15 before that, it was a hotly contested issue; but 16 over the last 10, 15 years it's become even 17 increasingly so -- 18 A Yes. 19 Q -- is that fair? 20 A Yes, that's fair. 21 Q Okay. Have you ever heard of the term 22 "the gun debate"?</p>	<p style="text-align: right;">Page 89</p> <p>1 the course of questioning, just let me know and 2 we'll -- 3 A Sure. 4 Q -- we'll try to hone in on that. 5 Do you have an ideological position with 6 respect to the American gun debate? 7 A What do you mean by an ideological 8 position? 9 Q Well, do you have a firm belief or way of 10 thinking with respect to the central issues that 11 are discussed in the country with respect to gun 12 ownership, gun rights, things of that nature? 13 A And by firm, just to make sure that I 14 understand, you -- you mean? 15 Q Well, I mean I -- I guess it would be a 16 question of degrees. 17 I mean do you consider yourself to have a 18 strong position with respect to the American gun 19 debate? 20 A Huh. 21 Q Or a deeply held position? 22 A I'm not sure any of these terms capture</p>

<p style="text-align: right;">Page 90</p> <p>1 the -- I would say I have a concern about the 2 American gun debate, that I worry it often doesn't 3 capture the range of concerns, the analysis, that I 4 think is appropriate to thinking through the 5 important issues and tough issues.</p> <p>6 So I would say my -- my position is I 7 would say I -- I have some skepticism towards, you 8 know, certain sorts of arguments that have been 9 made. I have to say sometimes from both sides in 10 the way -- the way that's sometimes, you know, 11 construed as -- as having partisan sides, although 12 I would note it -- there seems to be many 13 dimensions of these debates as well.</p> <p>14 It's -- there's some things where it's 15 not clear that there's just one side. There might 16 be multiple sides.</p> <p>17 So my -- I'd say my concern historically 18 on gun debate, I've worried that we're not doing -- 19 we're not getting the debate we deserve.</p> <p>20 Q Okay.</p> <p>21 A That the debate neglects important 22 information, the range of issues. So I would say</p>	<p style="text-align: right;">Page 92</p> <p>1 And he -- you know, he made out points 2 about the war on terror. He made the points about 3 all sorts of domestic policy. And -- and I think 4 Steven Pinker's right. And it's -- he -- it's 5 important that he's a psychologist. And there -- 6 there is something I think deeply ingrained in our 7 psychology where we do reason from anecdotes, from 8 things that are visible to us to, you know, things 9 that elicited visceral responses. And that's part 10 of being human.</p> <p>11 I think one concern in the gun debate is, 12 you know, there are certain things that are seen 13 and that elicit, you know, strong and, you know, 14 reasonable emotional response. But then there's 15 also questions of, you know: Well, what's the 16 ultimate policy evidence? What's gonna save the 17 most lives, protect the most people?</p> <p>18 And that's where this is part of my 19 entire position in social science. You know, we 20 just don't lead with our intuitions, and all sorts 21 of debates about health policy, about, you know, 22 traffic policy. You know, it requires research.</p>
<p style="text-align: right;">Page 91</p> <p>1 that's -- I would say -- you know, it would be 2 appropriate to say I've had historical skepticism 3 towards the -- the depths of the debate.</p> <p>4 Q So when you say worried we don't get the 5 debate we deserve, is that -- is that because you 6 believe that the debate issues have been kind of 7 simplified or politicized?</p> <p>8 A Well, there's two things. Certainly 9 there's that.</p> <p>10 But Steven Pinker at Harvard is a 11 distinguish psych -- professor of psychology there. 12 And he was recently asked: What do you think is 13 the biggest problem with the world today?</p> <p>14 And his answer was interesting. He said, 15 I think we don't do -- we -- we -- we make 16 decisions because of anecdotes rather than because 17 of data. And then he goes through a lost list of, 18 you know, people are terrified of things that 19 happen at vanishing small rates. And they don't 20 realize that, you know, sending their kid to school 21 in a car is actually pretty dangerous compared to 22 those other things.</p>	<p style="text-align: right;">Page 93</p> <p>1 And let's see, really, when you look at the 2 numbers, what's gonna be, you know, the best 3 outcome for the most people? What's gonna keep 4 people safest?</p> <p>5 So I'd say that as a social scientist, 6 I'd had a -- you know, an interest in the gun 7 debate to say: How do we -- how do we get this 8 right? How do we attend to data, you know, and 9 able to cordon off the, you know, visceral 10 reactions we have to see what's really gonna make 11 the most sense for keeping people safe and that 12 sort of thing.</p> <p>13 Q You mentioned the -- the partisan divide, 14 I think is the term you used.</p> <p>15 Do you consider the, quote/unquote, gun 16 debate to be strictly a partisan issue or a --</p> <p>17 A What'd you mean?</p> <p>18 Q -- partisan divide?</p> <p>19 A What'd you -- and when you say strictly a 20 partisan issue --</p> <p>21 Q Well, do you consider the gun debate in 22 partisan terms?</p>

<p style="text-align: right;">Page 94</p> <p>1        Do you -- do you believe that it's a      2 Democrat versus Republican issue exclusively, or do      3 you believe there are people on each side of the      4 debate who necessarily aren't advocating due to      5 political reasons?</p> <p>6        A   So there's two things. To say one, I can      7 just -- I can show you polling data. I can show      8 you the political psychology of it. It's -- and      9 that stuff will tell you that it's perceived in      10 partisan terms. And that's just -- that's just the      11 way others -- that's the way it is perceived      12 amongst average Americans.</p> <p>13       Your second part of your question seems      14 to be asking a -- maybe a slightly different      15 question, which is, you know: Are there      16 interesting people with things worth saying across      17 the political spectrum? I think, you know, sure,      18 that may be the case, and often is the case. It'd      19 be surprising to me if it were, you know, strictly      20 not the case.</p> <p>21       But I think that there's no doubt that      22 the -- the average American voter perceives this as</p>	<p style="text-align: right;">Page 96</p> <p>1 want to know -- let's think about the details of      2 how it works in practice, and then we can evaluate      3 it.</p> <p>4       Q   Okay. So fair to say you don't have a      5 blanket position on that particular issue; you need      6 to see details and know the entire specifics of the      7 issue before you would make a determination?</p> <p>8       A   Yes.</p> <p>9       Q   How about -- do you have a personal      10 position on United States citizens' access or right      11 to access automatic assault weapons?</p> <p>12       A   I -- I guess by position, are you saying      13 an -- an opinion on it or a --</p> <p>14       Q   Yeah. Yeah.</p> <p>15       A   Yeah, my opinion is it's not something --      16 I guess I haven't thought about it much. It's not      17 something that particularly concerns me, you know,      18 so I don't have strong feelings about it.</p> <p>19       Q   How about a position or opinion on laws      20 limiting gun access to individuals named on      21 terrorist watch lists, is that something you've      22 given any thought to or have an opinion on?</p>
<p style="text-align: right;">Page 95</p> <p>1 being a central access in a great amount of      2 partisan division.</p> <p>3       Q   Do you have a personal opinion with      4 respect to the issue of universal gun -- universal      5 background checks prior to gun purchase?</p> <p>6       A   Do I have a personal -- I can't say I've      7 looked into this in great detail. The -- every so      8 often I read an article first of all apprising me      9 of what exactly the current law is, which as I      10 often find is misrepresented, sometimes in news      11 articles.</p> <p>12       For me, at the end of the day, I'd want      13 to evaluate the very -- whatever very specific      14 proposal is being made. So even to ask the      15 question, you know, are you for universal      16 background checks, I just want to know how -- what      17 do you mean by that? How would that be executed?      18 What would it look like in practice? Then I could      19 have an opinion about it.</p> <p>20       Q   Okay.</p> <p>21       A   I says it's a -- I think it's an open      22 question, an interesting question. I would just</p>	<p style="text-align: right;">Page 97</p> <p>1       A   Yeah, I would want to see the -- the      2 details on any proposal: How does it work? Who's      3 on it? How do you get off? What are the standards      4 of use?</p> <p>5       Q   How about same question with respect to      6 the issue that's come up recently with respect to      7 accessibility to bump stocks, are you familiar with      8 the term "bump stock"?</p> <p>9       A   Right. Yeah, again, I haven't thought a      10 lot about bump stocks. I've certainly never seen      11 or used one. I have -- again, I'd want to see the      12 details. I don't know how easy these things are to      13 make to begin with. I don't know how many -- so      14 I'd want to see the details.</p> <p>15       Q   Do you think individuals that have felony      16 convictions should have access to firearms in the      17 United States?</p> <p>18       A   My inclination is I think they should      19 not.</p> <p>20       Q   Okay. Do you think individuals who have      21 been adjudicated with mental health problems should      22 have access to guns limited in any way?</p>

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1 A I'd want to hear the details, but it's 2 possible.  3 Q Okay.  4 A Depending on the proposal.  5 Q And how about with respect to individuals 6 convicted or adjudicated of domestic violence 7 crimes?  8 A Again, I'd have to hear the details.  9 Q Fair enough.  10 In preparation for issuance of this 11 report, Defendants' Exhibit 1, did you study New 12 York's -- New York state's entire gun paradigm or 13 entire system of gun laws?  14 A I certainly studied many gun laws in New 15 York, but I -- I don't think it could be possible 16 for me to be surprised by how many gun laws New 17 York has on the books that I -- that might exceed 18 even that search. So I certainly did research laws 19 in New York, the -- the history and development of 20 those laws.  21 I know your code is very long. And I 22 know these issues have long been a concern in this	1 this case?  2 A So what's complicated here is I'm aware 3 of there's an ongoing recent controversy and 4 litigation pertaining to these very issues. And so 5 certainly I'm -- I looked into them, beginning with 6 my understanding that this is a fast-changing 7 landscape, particularly in regarding storage and 8 transport.  9 So I -- I would defer to others, if those 10 are your particular concerns, for the latest legal 11 take, but -- yeah, so at a broad level.  12 Q Okay. Are you familiar at all with the 13 New York Safe Act? Is that something you looked 14 into during your preparation for this case?  15 A So I believe, if I'm -- if I'm -- I may 16 have misremembered this, but I believe that the 17 Safe Act, that was actually responsible for 18 amending the process by which you might seek an 19 extension for harassment.  20 Q Are you familiar with any other elements 21 of the Safe Act other than the elements related to 22 Penal Law 400 that are the focus of this lawsuit?
1 state, so I can say certainly with the -- the laws 2 that I thought were relevant to this case, I looked 3 into.  4 Q Okay. And sitting here today, do you 5 remember which laws those were that you considered 6 relevant that you looked into?  7 A So primarily those cited in my report.  8 Q Okay. And as you sit here today, do you 9 recall any gun law -- New York gun laws that you 10 looked into that were not cited in the report that 11 I should know about?  12 A So I -- one thing I was interested in is 13 when were the origins of some of these laws. You 14 know, a lot of searching I did, I -- I couldn't 15 tell you for sure, I couldn't recall the range of 16 stuff I looked at.  17 (Sotto voce discussion between counsel.)  18 BY MR. DAGUE:  19 Q Sorry. Sorry, Doctor.  20 Would you consider yourself generally 21 familiar with how New York State regulates a sale 22 or a transfer of firearms, in light of your work on	1 A No, I primarily focused on the aspects of 2 the Safe Act relevant to this case.  3 Q Okay. Are you aware of any recent 4 amendments to Penal Law Section 400.00(5)? Is that 5 something you looked into in preparation for this 6 case?  7 A Can you repeat the 00, which one?  8 Q Yeah, 00(5).  9 A I'm gonna read it one more time in full.  10 Q Yeah.  11 (Sotto voce discussion between counsel.)  12 BY MR. DAGUE:  13 Q Okay. So -- sorry.  14 Are you aware of any recent amendments or 15 changes to Penal Law 400.00(5)?  16 A I am -- by recent, you mean -- could you 17 just say the --  18 Q How about --  19 A -- time period?  20 Q -- how about within the last 30 days?  21 A No.  22 Q Okay. Okay. Do you have a personal

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<p>1 opinion or belief about how New York regulates sale      2 or transfer of guns, other than your opinions set      3 forth in the report?</p> <p>4 A Not particularly.</p> <p>5 Q Okay. So you don't have a generalized      6 feeling that New York is too strict or too liberal      7 with respect to guns?</p> <p>8 A The -- what I learned from my expert      9 preparation on this particular question raised many      10 other questions for me about say the -- the      11 benefits, rationals. But, no, that was not my      12 focus in this case, so I don't have a -- a      13 well-developed position on the -- the wider regime      14 for controlling guns in New York.</p> <p>15 Q Could you expand upon that a little bit,      16 about what -- what other questions were raised as      17 you did research into this particular issue?</p> <p>18 A Well, so I -- I'm aware of I guess      19 ongoing litigation that had concern for a while the      20 transport of a gun. And my understanding is that      21 there was a -- after many years, there was a last      22 minute change that the -- a legislative change or</p>	<p>1 A -- less --</p> <p>2 Q Yeah.</p> <p>3 A -- I -- I will use it now. Less fraught      4 with legal difficulties.</p> <p>5 Q Okay. And what does that mean, less      6 fraught with legal difficulties?</p> <p>7 A When I arrived in the District of      8 Columbia three years ago, they had still not      9 updated their firearms permitting system as had      10 been required by law. There's a certain point they      11 required four hours of instructions at a place -- I      12 think there was one gun store in the District that      13 you were allowed to buy guns from. There were      14 instruction requirements that very few people could      15 fulfill.</p> <p>16 There was actually, at that time, a      17 requirement that you notify -- if you wanted to      18 register a firearm, first call up the police,      19 notify them that you were going to bring a firearm      20 into the District. As soon as they had I guess      21 acquiesced to that notification, you were then to      22 drive specifically to the office, then bring the</p>
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<p>1 bureaucratic change on that.</p> <p>2 So it struck me that there had been a      3 history of some controversy about when and under      4 what circumstances somebody could even transport a      5 legally possessed firearm. And so I'm aware of      6 that controversy, but that wasn't my focus here.</p> <p>7 Q Okay. Based on your focus and research      8 here, do you have a -- did you develop a belief as      9 to how New York's gun laws fit in among other state      10 laws, other states' laws?</p> <p>11 A So, actually, when I had to research not      12 for this case but for the estimation of AR-15      13 manufacturing sales, the -- New York was a state      14 that came up as having -- I was aware that there      15 were at least different jurisdictions in New York      16 where ownership of certain guns is more difficult      17 or more restricted.</p> <p>18 Q Yeah, you testified earlier that you      19 maintain your personal guns in a state that is -- I      20 think you used the term "less fraught"; is that --</p> <p>21 A Yes --</p> <p>22 Q -- is that --</p>	<p>1 firearm into the police station, hoping that your      2 coming was properly heralded.</p> <p>3 It -- it struck me as a -- a system that      4 was ripe with inconsistencies and unclarities. And      5 actually a lot has happened even in the last few      6 years to try to at least bring some procedural      7 clarity. But the -- the risks of running      8 afoul of a ever-changing, ambiguous, and -- and      9 burdensome permitting process, just seemed like the      10 sensible thing to do was to not be armed in D.C. --</p> <p>11 Q Okay.</p> <p>12 A -- given those risks.</p> <p>13 Q Can you tell me what your understanding      14 of Penal Law Section 400.00(5) is?</p> <p>15 A So --</p> <p>16 Q (5)(a), I'll --</p> <p>17 A Yeah, so the -- I mean the part relative      18 to this case was that, essentially, to have a      19 handgun legally owned in New York, there is a      20 requirement for this handgun permit. And the      21 specific question of this section is whether      22 that -- the application and detail should be a</p>

<p style="text-align: right;">Page 106</p> <p>1 matter of public record.</p> <p>2 Q And with respect to -- well, let me back</p> <p>3 up real quickly.</p> <p>4 And for vocabulary purposes, are you fine</p> <p>5 with me referring to this section as "Penal Law</p> <p>6 400," for the course --</p> <p>7 A Sounds --</p> <p>8 Q -- of this depo?</p> <p>9 A Great. We'll --</p> <p>10 Q Okay.</p> <p>11 A -- consider that, yes.</p> <p>12 Q I might even call it PL 400.</p> <p>13 A Sure.</p> <p>14 Q Okay. If you have any questions, if I'm</p> <p>15 referring to a specific subsection, just let me</p> <p>16 know. But generally, I'll use "Penal Law 400."</p> <p>17 Do you know, under PL 400, how this</p> <p>18 material is publicly accessible?</p> <p>19 A My understanding -- well, right now, my</p> <p>20 understanding is an injunction. But, historically,</p> <p>21 I believe it required something analogous to a</p> <p>22 FOIA-type request.</p>	<p style="text-align: right;">Page 108</p> <p>1 person's address, and even the -- the type of gun.</p> <p>2 Q Is that your current understanding, that</p> <p>3 the public disclosure is name, address, and type of</p> <p>4 weapon?</p> <p>5 A Again, my current understanding is that</p> <p>6 it's under an injunction and this is inaccessible.</p> <p>7 Q Okay.</p> <p>8 A So I -- it's interesting, having had</p> <p>9 other experience reaching out to officials for</p> <p>10 public records, I've also experienced enormous</p> <p>11 disparity -- procedural disparity in what a</p> <p>12 secretary decides to fax you, what they decide to</p> <p>13 disclose.</p> <p>14 So I'm not also certain about, in</p> <p>15 practice, which different counties or, you know,</p> <p>16 might -- how they might respond to these requests</p> <p>17 and whether there's complete regularity in their</p> <p>18 actual practices.</p> <p>19 Q Right. And I'm just trying to delve</p> <p>20 into, you know, your knowledge of injunction aside</p> <p>21 or disparities in application. I'm just trying to</p> <p>22 get a baseline sense as to what your belief is as</p>
<p style="text-align: right;">Page 107</p> <p>1 Q Okay. And you said you understand that</p> <p>2 currently there's an injunction on the law; is that</p> <p>3 your --</p> <p>4 A My understanding is there's some -- at</p> <p>5 the current point, some restriction, I believe</p> <p>6 pending the outcome of this sort of -- these sort</p> <p>7 of cases and objections.</p> <p>8 Q Okay. And your understanding of the --</p> <p>9 the public access of this law is that it's through</p> <p>10 a FOIL; is that fair?</p> <p>11 A It's something analogous to that. You'd</p> <p>12 have to in -- in -- historically, you would</p> <p>13 inquire --</p> <p>14 Q Yeah.</p> <p>15 A -- and could ask for that information.</p> <p>16 Q And do you know under this law, PL 400,</p> <p>17 what information specifically is publicly</p> <p>18 accessible from FOIL?</p> <p>19 A So my understanding, which comes more</p> <p>20 from a newspaper of both initial reports of</p> <p>21 controversies, is that things that could be</p> <p>22 disclosed would include the person's name, the</p>	<p style="text-align: right;">Page 109</p> <p>1 to what info is deemed public under PL 400 --</p> <p>2 A So --</p> <p>3 Q -- if someone makes --</p> <p>4 A -- yeah --</p> <p>5 Q -- a FOIA request.</p> <p>6 A -- so my understanding is the name for</p> <p>7 sure --</p> <p>8 Q Yes.</p> <p>9 A -- and that historically people have been</p> <p>10 able to access, at least some circumstances,</p> <p>11 address as well as type of gun.</p> <p>12 Q Okay.</p> <p>13 MR. DAGUE: I know that you guys got to</p> <p>14 order lunch. I'm going to wrap up. We're going to</p> <p>15 go out. Give me three minutes. I'll wrap up. And</p> <p>16 then we can take a break and you can -- is that</p> <p>17 fair?</p> <p>18 MR. CHUCK COOPER: We can make an order</p> <p>19 and then continue.</p> <p>20 MR. DAGUE: Yeah, yeah. Because we've</p> <p>21 been going for about an hour anyway, so it's a good</p> <p>22 time for a break.</p>

<sup>1</sup> BY MR. DAGUE:

<sup>2</sup> Q Do you know when this law, PL 400, was  
<sup>3</sup> codified into law in New York? Is that something  
<sup>4</sup> you looked into?

<sup>5</sup> A Yeah, my recollection was like in the  
<sup>6</sup> '60s.

<sup>7</sup> Q Okay. And do you know if its original  
<sup>8</sup> codification included the exemptions? Well, strike  
<sup>9</sup> that. Let me lay a foundation.

<sup>10</sup> Do you know if the current law contains  
<sup>11</sup> exemptions s?

<sup>12</sup> A Right, so it -- it contains exemptions  
<sup>13</sup> which we -- I believe we mentioned earlier. It  
<sup>14</sup> came out of that Safe Act and the controversy  
<sup>15</sup> partly tied, in my understanding, to the -- some of  
<sup>16</sup> the initial controversy the newspapers caused. So  
<sup>17</sup> there are exemptions now that can apply if you  
<sup>18</sup> swear that you meet certain standards, one of  
<sup>19</sup> them -- well, yes. So the answer is yes.

<sup>20</sup> Q Okay. And let me just tee that up for  
<sup>21</sup> you.

<sup>22</sup> What are the exemptions, to your

<sup>Page 110</sup>

<sup>Page 112</sup>

<sup>1</sup> law enforcement experience. And -- and that can  
<sup>2</sup> also be a factor here.

<sup>3</sup> But for the purposes of the question of  
<sup>4</sup> this case, the relevant exemptions are noted there  
<sup>5</sup> on the case on top of page 3.

<sup>6</sup> Q Okay.

<sup>7</sup> MR. DAGUE: Let's go off.

<sup>8</sup> (Recess)

<sup>9</sup> MR. DAGUE: Okay, Doctor, back on the  
<sup>10</sup> record.

<sup>11</sup> BY MR. DAGUE:

<sup>12</sup> Q And understand you're still under oath,  
<sup>13</sup> obviously.

<sup>14</sup> I want to turn your attention to your  
<sup>15</sup> report, which has been marked in the matter as  
<sup>16</sup> Defendants' Exhibit 1. Now, just in terms of  
<sup>17</sup> laying kind of the ground rules here, I intend to  
<sup>18</sup> walk through portions of this report throughout the  
<sup>19</sup> deposition. What I'd like to accomplish is I will  
<sup>20</sup> direct your attention to the specific part of the  
<sup>21</sup> report that I intend to ask you about.

<sup>22</sup> A Uh-huh.

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<sup>Page 113</sup>

<sup>1</sup> Q I do not anticipate or expect you to  
<sup>2</sup> regurgitate this thing from memory.

<sup>3</sup> A Gotcha.

<sup>4</sup> Q If I'm asking about a portion and you  
<sup>5</sup> don't know where it is or if there's other parts  
<sup>6</sup> that you think are relevant, let me know. But  
<sup>7</sup> that's my goal, is to point you in the direction,  
<sup>8</sup> so -- okay.

<sup>9</sup> Do you have a copy of Exhibit 1 in front  
<sup>10</sup> of you?

<sup>11</sup> A I do.

<sup>12</sup> Q Okay. I want to just briefly point your  
<sup>13</sup> attention to the first paragraph here where you  
<sup>14</sup> say --

<sup>15</sup> MR. DAGUE: And, Barbara, for your  
<sup>16</sup> edification, we'll be reading from this somewhat  
<sup>17</sup> I will provide you with a copy of this at the end.

<sup>18</sup> BY MR. DAGUE:

<sup>19</sup> Q The first paragraph, I have been asked to  
<sup>20</sup> evaluate the reports submitted by Dr. Zeoli --  
<sup>21</sup> Z-E-O-L-I -- Dr. Sege -- S-E-G-E -- and  
<sup>22</sup> Dr. Hamilton -- spelled as it sounds -- in support

<p style="text-align: right;">Page 114</p> <p>1 of New York's defense of Penal Law 400, which makes 2 the name and address of any person granted a 3 handgun license a public report</p> <p>4 Do you see that?</p> <p>5 A I do.</p> <p>6 Q Okay. Now, I want to ask you a little 7 bit about the scope of your task here.</p> <p>8 A Uh-huh.</p> <p>9 Q Were you asked to opine with respect to 10 the constitutionality or legal viability of PL 400, 11 or were you asked to simply rebut the reports of 12 Zeoli, Sege, and Hamilton?</p> <p>13 A I was asked to rebut -- to evaluate the 14 reports. The challenge, though, is as a -- a 15 social scientist, when I evaluate public policy, 16 you know, at the highest level you can think 17 that -- of this as a -- a cost benefit analysis. 18 So I need to ask, you know, what are the -- the 19 potential benefits of this law, the most likely 20 benefits. And those are substantially what those 21 three reports are arguing about.</p> <p>22 But to -- to even evaluate those</p>	<p style="text-align: right;">Page 116</p> <p>1 review or new review of this law from your field of 2 expertise, or were you asked to look at the law 3 through the lens of the three expert reports 4 provided with that?</p> <p>5 A I was asked to evaluate the three expert 6 reports.</p> <p>7 Q Okay. And the report itself is entitled 8 "rebuttal report."</p> <p>9 A Uh-huh.</p> <p>10 Q Do you see that?</p> <p>11 A That's right.</p> <p>12 Q What does that mean? Why did you entitle 13 it "rebuttal report"?</p> <p>14 A I thought that's what we're supposed to 15 entitle these reports.</p> <p>16 Q Okay.</p> <p>17 A That -- that was totally proforma.</p> <p>18 Q Fair enough.</p> <p>19 MR. DAGUE: Just off the record for a 20 second.</p> <p>21 (Discussion off the record)</p> <p>22 BY MR. DAGUE:</p>
<p style="text-align: right;">Page 115</p> <p>1 arguments in a larger policy, you might say, well, 2 what are the costs on the other -- you know, 3 what -- what are the downsides. So, you know, if 4 this potentially could save one from child's life 5 every century, that could be a benefit, again, but 6 at what price.</p> <p>7 And so the -- the beginning part of this 8 report is my attempt to just understand what's 9 the -- the universe we're considering in terms of 10 cost and benefits, who might be adversely affected 11 by this law, you know, to what degree are the 12 benefits that the doc -- the three doctors arguing 13 for stand up to scrutiny.</p> <p>14 And so to be clear in answering your 15 question, my -- my primary purpose is to evaluate 16 their arguments. But that evaluation, in -- in my 17 opinion requires thinking about the -- the -- the 18 terms of the cost and benefits in the sort of 19 widest scope.</p> <p>20 Q Okay. And I guess what I'm wondering is 21 partially answered.</p> <p>22 Were you asked to take a de novo or clear</p>	<p style="text-align: right;">Page 117</p> <p>1 Q Were you asked to provide -- were you 2 asked by counsel to provide an assessment of the 3 constitutionality of PL 400?</p> <p>4 A I was asked to evaluate the three expert 5 witness reports.</p> <p>6 Q Okay. Do you believe in the course of 7 your evaluation of the three expert reports that 8 you provided an opinion as to the constitutionality 9 of this law?</p> <p>10 A I certainly had many questions that arose 11 regarding constitutionality. And -- and, 12 specifically, just to lay out what I'm trying to do 13 and why these questions arose, if -- if we're to 14 think about the cost of this law, the question -- 15 one question for me is: You know, what are other 16 similar circumstances, analogous circumstances, 17 other -- I mean I take it, you know, this law is -- 18 is impinging on an enumerated right in the 19 Constitution. There are many enumerated rights in 20 the Constitution.</p> <p>21 So as a test case, you know, how are 22 other rights, Constitutionally enumerated rights,</p>

<p style="text-align: right;">Page 118</p> <p>1 protected and what deference is given the 2 protection of privacy surrounding those rights. 3 And so it -- for me, it's part and parcel of this 4 cost benefit analysis.</p> <p>5 You know, thinking about, on the one 6 hand: What are the -- what other things are like 7 this? How do we evaluate those things? And, you 8 know, the Constitution's obviously the -- the 9 reference point for those analogs. And, you know, 10 what are the potential -- you know, what are -- 11 what are -- if there are for those other protected 12 rights, you know, strong barriers, what's the 13 rationale behind those barriers? How do we think 14 about the cost to violating them.</p> <p>15 So I -- the Constitutional analysis I do 16 here I think raises my questions about the 17 constitutionality of this law. But my purpose was 18 to explore this in -- in the context of 19 establishing the potential costs.</p> <p>20 Q Okay.</p> <p>21 A The potential and actual costs of this 22 law.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q -- are you or are you not offering an 2 expert opinion as to the constitutionality of PL 3 400?</p> <p>4 A Yeah, that's beyond the scope of what I 5 was asked to do.</p> <p>6 Q Okay. Are you or are you not offering an 7 opinion with respect to the legality of PL 400, or 8 is that --</p> <p>9 A And I --</p> <p>10 Q -- beyond the scope?</p> <p>11 A -- I'm not a lawyer. I'm -- what I'm 12 offering here is an evaluation of the three expert 13 witnesses' claims.</p> <p>14 Q Okay. All right. Let's look at the 15 third full paragraph on page 1 of the report if we 16 could.</p> <p>17 I'm going to direct your attention to the 18 second sentence of that paragraph that reads, Even 19 if parents and victims of domestic abuse did 20 systematically avail themselves of the information 21 provided by handgun license records -- and there is 22 no evidence that they have -- the incidents and</p>
<p style="text-align: right;">Page 119</p> <p>1 Q Okay. So in your analysis, you believe 2 you uncovered some constitutional questions, but 3 did you answer those questions through this report?</p> <p>4 A So I -- I -- this report is fundamentally 5 about evaluating Dr. Zeoli, Dr. Sege, Dr. Hamilton. 6 It strikes me there are deep constitutional 7 concerns, which -- which I've outlined here.</p> <p>8 Q Okay.</p> <p>9 A I can tell you, at least in the context 10 of my evaluation, the -- the claimed benefits of 11 this law I found extraordinarily uncompelling, 12 which then has to be weighed against what are -- 13 what are the costs. And if the costs, as I laid 14 them out in those first few pages, strike me as -- 15 as, you know, fairly substantial.</p> <p>16 Q Okay.</p> <p>17 A But the constitutional reasoning is -- is 18 instrumental to trying to understand and evaluate 19 the arguments of the other three experts.</p> <p>20 Q And I just want to be clear so that I 21 understand the full scope of this --</p> <p>22 A Uh-huh.</p>	<p style="text-align: right;">Page 121</p> <p>1 scenarios that the authors wish to prevent are so 2 rare that handgun ownership is not a useful risk 3 indicator for the purposes they propose, 4 particularly on a cost benefit basis.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And you wrote that, correct?</p> <p>8 A Yes.</p> <p>9 Q Okay. When you use the term "rare" with 10 respect to domestic violence and unintentional 11 handgun death, what do you mean in this context by 12 the term "rare"?</p> <p>13 A Right. For all of these things, it's 14 useful to consider to consider these in saying in a 15 broader context of things that I think we're 16 familiar with. So if -- if I were to ask you, you 17 know: Are you concerned about the threat that a 18 bathtub poses to your child or other people's 19 child? Are you concerned about the threat that 20 cars pose? Are you concerned about the threat that 21 your medicine cabinet poses?</p> <p>22 And if I were to tell you, well, whatever</p>

<p style="text-align: right;">Page 122</p> <p>1 concerns you have about that, the deaths caused by      2 handguns in order of magnitude less -- 40 times      3 less, something like that, then I would say, well,      4 rare compared -- compared to these other daily      5 things we interact with, apparently without great      6 concern, which still do present some risks, even      7 compared to those, these are much, much less likely      8 to occur, incidents regarding handguns in the two      9 scenarios outlined.</p> <p>10 So "rare," I think in -- you know, you're      11 going about your average, everyday life, you know,      12 some things are likely, some things are unlikely.      13 You know, a lightening strike I think is rare. In      14 the U.S., something like 30 to 60 people are killed      15 by lightening each year. I think that's a rare      16 event. Something like 50 or 100 kids are killed by      17 handguns accidentally each year.</p> <p>18 So I mean if -- if you think lightening      19 strikes are rare, which, you know, pardon me, if      20 lightening strikes killing someone is rare, I'm      21 trying to, you know, say what other common familiar      22 items do we identify in the world and how we think</p>	<p style="text-align: right;">Page 124</p> <p>1 same order as lightening strikes --      2 A It --      3 Q -- in New York?      4 A -- it -- it turns out, nationally, it's      5 about as rare as a national (sic) -- as a      6 lightening strike. In New York, it's much rarer.      7 Q And how about the use of unintentional      8 handgun injuries, not the deaths among children, is      9 that rare, on the order of lightening strikes?</p> <p>10 A That's more than lightening strikes.      11 Q Okay.      12 A But I -- I -- the -- I -- the statistics      13 I've seen on injuries and the multiples compared to      14 deaths would place it above lightening strikes.      15 Q You mentioned, you know, like incidents      16 that maybe have a higher measure of probability,      17 like you mentioned use of cars --      18 A Uh-huh.      19 Q -- bathtub safety, things like that,      20 right?      21 A Uh-huh.      22 Q You understand that those things are</p>
<p style="text-align: right;">Page 123</p> <p>1 about their prevalence risk, you know, rarity,      2 and -- and so, yeah, rare in the common parlance,      3 it seems to me these events --      4 Q Okay.      5 A -- are pretty rare.      6 Q Do you consider the use of a handgun in      7 the perpetration of a domestic violence -- a      8 domestic violence incident to be rare on the order      9 of a lightening strike?      10 A It's -- there's -- it's slight -- at      11 least in New York, it's slightly more prevalent      12 than lightening strikes on a yearly basis.      13 Q How about on a national level? Do you      14 consider it to be akin to the rarity of a      15 lightening strike just in a domestic violence      16 context?      17 A In a domestic violence context, yeah,      18 it's more common than lightening strikes, you know,      19 less common than many other things, but --      20 Q Okay. And do you -- with respect to the      21 use of handguns and unintentional deaths of      22 children, do you consider that to be rare, in the</p>	<p style="text-align: right;">Page 125</p> <p>1 regulated as well; there are laws with respect to      2 transportation?      3 A You need law for a bathtub permit? Can      4 you --      5 Q Sure. But I'm asking --      6 A Yeah.      7 Q -- about vehicles --      8 A Yes. And I'm -- I'm sorry --      9 Q -- specifically.      10 A -- my students, often I ask them to see      11 how it's -- so regulation is something we talk      12 about a lot in the business school. And it's often      13 this blanket concept.      14 Q Uh-huh.      15 A And so it is -- obviously, we have      16 various sorts of regulation for a lot of different      17 things.      18 Q Right. And we have laws directed at the      19 safety of children in automobiles, right?      20 A Uh-huh. Yes.      21 Q So we have laws that are directed at the      22 use of safety harness or car seats in vehicles for</p>

<p>1 children, right?</p> <p>2 A Right</p> <p>3 Q And your anticipation that those laws</p> <p>4 were created, in part, for the children's safety?</p> <p>5 A Right</p> <p>6 Q Okay. And we have laws about the use of</p> <p>7 illicit drugs and/or alcohol when operating a motor</p> <p>8 vehicle; is that right?</p> <p>9 A That's correct</p> <p>10 Q And would you agree with me that those</p> <p>11 laws were, in part, put in place for the safety of</p> <p>12 individuals on the road?</p> <p>13 A Yes.</p> <p>14 Q Okay. Now, we've talked a little bit</p> <p>15 about the distinction between numbers in New York</p> <p>16 versus nationally.</p> <p>17 And what I'm wondering is, in your</p> <p>18 opinion, would a state like New York be able to</p> <p>19 observe national trends and national data when</p> <p>20 creating or justifying a law, or are they limited</p> <p>21 to domestic trends and numbers only?</p> <p>22 A Well, I think it would depend.</p>	<p style="text-align: right;">Page 126</p> <p>1 exact -- you know, it'd depend on the nature of</p> <p>2 that epidemic, what caused it to spread, what</p> <p>3 reasons you have to think it is gonna spread. You</p> <p>4 know, the -- the devil is certainly in the details</p> <p>5 there.</p> <p>6 And the argument would have to be made</p> <p>7 on -- on why, I suppose, New York thinks that</p> <p>8 whatever is going on in Hawaii or whatever is</p> <p>9 something that's relevant for understanding of</p> <p>10 threats we might face here.</p> <p>11 Q Okay. In that same section of the</p> <p>12 report, looking in paragraph three, page 1, you use</p> <p>13 the term "risk indicator," and say, Handgun</p> <p>14 ownership is not a useful risk indicator for the</p> <p>15 purposes that they propose.</p> <p>16 A Uh-huh.</p> <p>17 Q Do you see that?</p> <p>18 A Yep.</p> <p>19 Q What do you mean by the term "risk</p> <p>20 indicator" in that context?</p> <p>21 A Yeah. So the -- so the question is: Is</p> <p>22 this knowledge, in asking about this, going to be</p>
<p>1 Q Okay. What would it depend on?</p> <p>2 A Well, it would depend on the reasons New</p> <p>3 York had in thinking these trends would extrapolate</p> <p>4 to New York. So I -- you know, if they're getting</p> <p>5 worse and worse winters in Colorado, you know, and</p> <p>6 maybe the -- winter is getting worse nationally but</p> <p>7 you're getting worse in one region, you'd wanna</p> <p>8 know is this a West Coast phenomenon. If it's not,</p> <p>9 then the East Coast should also be thinking about</p> <p>10 it.</p> <p>11 Q Okay.</p> <p>12 A It'd just -- I mean it'd have to be in</p> <p>13 the details --</p> <p>14 Q Yeah.</p> <p>15 A -- of whatever --</p> <p>16 Q So, I mean, but generally, do you believe</p> <p>17 that if there's an epidemic of something going on</p> <p>18 nationally or in other another, that a state</p> <p>19 legislature would be permitted to take that issue</p> <p>20 up in law to try to avoid spread of the epidemic in</p> <p>21 their state?</p> <p>22 A Yeah, but, again, it would depend on</p>	<p style="text-align: right;">Page 127</p> <p>1 systematically useful? And, you know, you can</p> <p>2 think about it in the context of lightening</p> <p>3 strikes. So I'm -- I'm a parent. I'm gonna drop</p> <p>4 off my kids at a playmates' house. And maybe every</p> <p>5 time I do that, I should formally ask them, Are you</p> <p>6 gonna let the kids play outside if it begins to</p> <p>7 rain?</p> <p>8 We can have every parent asking that</p> <p>9 every single time. Be kinda bizarre to. Because,</p> <p>10 first of all, like there's a commonsense</p> <p>11 expectation. Like generally, for the most part,</p> <p>12 kids are probably gonna come inside because they</p> <p>13 don't wanna get wet. And parents are probably</p> <p>14 gonna, you know, be sensible and ask the kids to</p> <p>15 come inside. It gets crazy. People -- parents are</p> <p>16 gonna ask the kids to come inside if it gets crazy</p> <p>17 outside.</p> <p>18 But even if kids were to linger outside a</p> <p>19 little longer, there -- there is a chance that they</p> <p>20 would get struck by lightening, but it's a very,</p> <p>21 very small chance. And so the question is: Would</p> <p>22 it be worthwhile for parents to be systematically</p>

<p style="text-align: right;">Page 130</p> <p>1 concerned, for them to lose sleep over concerns 2 that their kids will even get struck by lightening, 3 for them to be asking at every engagement what your 4 weather plans are gonna be.  5 And the -- the claim I'm making here is 6 be -- because -- if these incidents are so rare, 7 you know, probably you should spend your time 8 asking about, you know: How many bathtubs are 9 there in the house? Are they gonna have restricted 10 access to those bathtubs? Anyone gonna be, you 11 know -- I mean there's a lot of other things we 12 could worry about.  13 So the question is, you know: Are -- we 14 have finite time, resources. Of the -- the 15 thousand things that might harm a child at a 16 playmate's house, you know, what -- what are gonna 17 be the most important things, the most valuable 18 things to ask about, to inquire about  19 And my claim here is that, you know, as 20 risk indicators go, evidentially this, at least 21 statistically, is pretty low on a -- on a long list 22 of things. So -- so I don't -- I don't -- wouldn't</p>	<p style="text-align: right;">Page 132</p> <p>1 supervision, sure, that might be a reason to ask 2 the question. 3 Q Right now, with a lightening storm coming 4 in, that would be something that you would have -- 5 you would be able to determine in advance if it was 6 coming in, right? 7 A Not around D.C. They -- they -- 8 Q Well, you could check on apps, right? 9 A You can. I -- again, if you live in 10 D.C., we -- we get storms on a very random basis -- 11 Q Right. 12 A -- throughout the summer, sometimes 13 blocks away. 14 Q Well -- 15 A But I take it, yeah, there's -- there's 16 some things you might think you can plan with some 17 foresight. 18 Q But you would have, theoretically, access 19 to information that you could check on the presence 20 of lightening in the area when you're dropping a 21 child off for a play date? 22 It'd be something that's not -- not</p>
<p style="text-align: right;">Page 131</p> <p>1 fault parents, and I think they're probably being 2 pretty sensible, if they aren't obsessing over 3 this, if they aren't asking about it at every 4 playmate's date.  5 There's an interesting question, if they 6 do really care about it, even whether this law is 7 well suited to that -- and we can talk about that 8 later --  9 Q Doctor, do you think it would be 10 irrational for a parent to inquire of a playmate 11 whether they planned on taking a child inside 12 during a lightening storm, when they were dropping 13 their son or daughter off at that home? Would that 14 be an irrational question to ask?  15 A If -- if it's -- if it's -- I think 16 psychologically it performs a very useful function. 17 And if -- if you had any -- any, for some reason -- 18 I -- I do think it would be a kind of odd thing to 19 ask every parent everywhere and every time. If 20 there were some specific concern you had, you knew 21 lightening storms were coming in. You knew the 22 parents often let the kids play without any</p>	<p style="text-align: right;">Page 133</p> <p>1 restricted in any way, right? 2 A Sure. 3 Q Right. And same thing with your bathtub 4 analogy: You would be able to assume that someone 5 has a bathtub in the home; isn't that right, when 6 you drop the child off? 7 A Well, it depends. Maybe. 8 Q Fair to say most -- a large percentage of 9 American homes have a bathtub somewhere in the 10 home? 11 A Probably. 12 Q Okay. But with a handgun, a parent 13 dropping them off, there's no way they can check a 14 weather map to determine if there's a handgun in 15 that home, right? 16 A Again, the -- the question would be 17 whether it would be valuable to know the -- if you 18 follow the weather analogy -- again, I think in -- 19 almost every day in the summer in D.C. there's a 20 chance of a -- thunder somewhere. 21 And my overriding claim is it would -- it 22 would actually probably be a waste of parents' time</p>

<p style="text-align: right;">Page 134</p> <p>1 to constantly obsess over that potentiality 2 because, in fact, this is such an extraordinarily 3 rare event. 4 That aside, if you had any specific 5 reason to think that there really, for some -- you 6 know, there's some tell, something that made you 7 concerned, we might entertain what's the best way 8 to get that information that you'd like to know, 9 whether there is a handgun. 10 And, you know, as I note in my report, 11 the peculiar way this disclosure is structured is 12 it's not clear they would even give you reliable 13 information about that. So it -- obviously, it 14 doesn't cover long guns. It doesn't cover those 15 who have exemptions. It doesn't cover -- 16 Q Right. 17 A -- you know, all these people. Illegal 18 guns, which it turns our, as far as we can tell, 19 account for most accidental shootings that I could 20 document. 21 So it -- it might be as bad, actually, 22 for a parent to think they were -- you know, if</p>	<p style="text-align: right;">Page 136</p> <p>1 A -- all I'm suggesting is that it would -- 2 in fact, when you look at statistics, be a little 3 weird, you know, if you were strictly statistical 4 reasoners. 5 I mean on the other side of this, maybe 6 parents should be a lot more concerned about 7 bathtubs. Maybe they should be a lot more 8 concerned about, you know, if there's -- there's 9 matches in a house. Maybe -- I mean clearly if you 10 think they should be asking about handguns, they 11 should be asking about matches and stuff like that, 12 too, which are much more dangerous. You know, 13 literally more than -- on magnitude, more 14 dangerous. 15 So I -- I think it's reasonable that 16 parents aren't concerned about dozens, maybe 17 hundreds, maybe thousands of things that pose -- 18 pose a greater threat to their child. But if they 19 had a reason for concern, okay. We can ask that 20 question, whether this law is well tailored to even 21 address whatever residual concerns they have. 22 But yes, as a general matter, it strikes</p>
<p style="text-align: right;">Page 135</p> <p>1 there were some reason for concern -- you think the 2 lightening storm, proverbial lightening storm might 3 be a risk. I guess the worst thing would be to -- 4 to look at a weather map that was wrong 50 percent 5 of the time. 6 So I -- I -- I take the line of -- of 7 reasoning here. Again, I think it's probably not 8 something parents should be systematically 9 concerned about, that it's -- 10 Q Now, you've -- you've introduced this 11 concept of obsessed, of obsession, the parents 12 having an obsession. I believe you said lose 13 sleep. 14 I'm wondering, where does that come from? 15 Because Dr. Sege and -- well, Dr. Sege 16 and Dr. Hamilton, Professor Hamilton, they don't 17 talk about an obsession with this fact. They talk 18 about a parent being concerned, and using this tool 19 as a way. But you -- you've introduced obsession. 20 Is that -- where does -- 21 A Oh, I -- 22 Q -- come from?</p>	<p style="text-align: right;">Page 137</p> <p>1 me as something that parents shouldn't particularly 2 lose sleep about unless there was some particular, 3 you know, reason that they had to think this was a 4 particular liability. 5 MR. CHUCK COOPER: Harris? 6 MR. DAGUE: Yes? 7 MR. CHUCK COOPER: I just want you know 8 that the lunches have arrived. 9 MR. DAGUE: Okay. 10 MR. CHUCK COOPER: So if -- you know, 11 whenever you're at a -- 12 MR. DAGUE: Yeah, I'll try to find a good 13 spot in a few more minutes. 14 BY MR. DAGUE: 15 Q I'm just trying to get a full handle on 16 this risk indicator concept -- 17 A Yeah. 18 Q -- you talk about here in paragraph one. 19 Am I too simplistic to read this as when 20 you say, The incidents and scenarios that the 21 authors wish to prevent are so rare that handgun 22 ownership is not a useful risk indicator for that</p>

<p>1 purpose?</p> <p>2 I mean are you suggesting that handgun</p> <p>3 ownership is not a risk indicator for a domestic</p> <p>4 violence incident that involves a handgun?</p> <p>5 Am I --</p> <p>6 A Well --</p> <p>7 Q -- reading that --</p> <p>8 A -- a legal --</p> <p>9 Q -- improperly?</p> <p>10 A -- pardon me, legal -- legally disclosed</p> <p>11 and permitted handgun ownership.</p> <p>12 Q Uh-huh.</p> <p>13 A And it turns out, actually -- if you</p> <p>14 think, you know, I wanna know whether or not</p> <p>15 somebody is a risk for this -- so we have this one</p> <p>16 population. We'll call them handgun permit owners.</p> <p>17 So what's the likelihood they're gonna be involved</p> <p>18 with this? Well 9,999 out of 10,000 of them</p> <p>19 will -- will not be.</p> <p>20 And so it turns out you have this group,</p> <p>21 99.9 percent of them are not gonna be involved with</p> <p>22 this sort of stuff. And you wanna say, well, we're</p>	<p>Page 138</p> <p>1 A But you all -- undoubtedly, your state</p> <p>2 agency could look at this. I would love to know</p> <p>3 what percentage of handgun homicides were of</p> <p>4 legally owned and registered handguns. That would</p> <p>5 be interesting thing for you all to pursue.</p> <p>6 Q Now, you derive this -- you state in your</p> <p>7 report 99.99 percent of gun-owning households will</p> <p>8 not have a child accident or an intimate partner</p> <p>9 violence -- sorry, a child accidentally killed or an</p> <p>10 intimate partner violence.</p> <p>11 Where do you derive those 99 percent</p> <p>12 figures from? Where is that --</p> <p>13 A Yeah.</p> <p>14 Q -- data culled from?</p> <p>15 A The -- I actually noted in my report.</p> <p>16 (Witness looked at document). So we</p> <p>17 have -- I'm not sure where it is.</p> <p>18 Ah. Page 10.</p> <p>19 Q Okay.</p> <p>20 A So we have these -- the number is 16</p> <p>21 firearms homicides in New York. New York has about</p> <p>22 19.5 million residents. So that's meaning that out</p>
<p>1 gonna burden them, scrutinize them, because there's</p> <p>2 this less than .01 percent that if they're abiding</p> <p>3 by the law, might have -- be more likely to break</p> <p>4 this other law.</p> <p>5 So, yeah, my point -- I mean just as a</p> <p>6 matter of statistics here, do -- does the fact that</p> <p>7 I know somebody's a handgun owner a good predictor</p> <p>8 of whether they're going to commit a crime? No.</p> <p>9 No.</p> <p>10 Q But is the fact that someone's a handgun</p> <p>11 owner a good predictor that if they do commit a</p> <p>12 domestic violence using a handgun, they have a</p> <p>13 handgun?</p> <p>14 A A legally owned handgun.</p> <p>15 Q A legally owned handgun, that's right.</p> <p>16 But is that a good indicator of the fact</p> <p>17 that they have a handgun if they commit --</p> <p>18 A Probably --</p> <p>19 Q -- that crime?</p> <p>20 A -- not. I didn't run the numbers for</p> <p>21 here.</p> <p>22 Q Sure.</p>	<p>Page 139</p> <p>1 of those 19 million residents, so 16 out of 19 --</p> <p>2 out of 1. -- pardon me, 19.5 million residents,</p> <p>3 there's an incidence rate of .0000008.</p> <p>4 And you do the -- the simple arithmetic</p> <p>5 there. And it means that -- I have estimated</p> <p>6 earlier there's -- from what I could tell from</p> <p>7 newspaper reports, a few hundred thousand people,</p> <p>8 apparently, that own these, so --</p> <p>9 Q Did you look into just deaths, or did you</p> <p>10 look into injuries on both fronts, domestic</p> <p>11 violence and accidental childhood injuries --</p> <p>12 A Yeah.</p> <p>13 Q -- when you derived those numbers?</p> <p>14 A So that is for the -- the -- this is</p> <p>15 specifically in the context of Zeoli's rebuttal.</p> <p>16 Now, it turns out, if I run the same</p> <p>17 numbers with the handgun deaths of children, notice</p> <p>18 those numbers are much, much rarer than the</p> <p>19 domestic violence homicides. And the -- the --</p> <p>20 it's a rounding error that isn't gonna move that at</p> <p>21 all.</p> <p>22 Q Yeah, what I asked is -- you -- you keep</p>

<p style="text-align: right;">Page 142</p> <p>1 referring to homicides.</p> <p>2 And what I asked is did you -- did you</p> <p>3 look at injuries --</p> <p>4 A Ah.</p> <p>5 Q -- not just homicides?</p> <p>6 A I didn't look at injuries. Dr. Zeoli</p> <p>7 didn't focus on injuries; she focused on homicides.</p> <p>8 And I was rebutting her on that.</p> <p>9 Q Did Dr. Sege look at injuries?</p> <p>10 A He -- I believe he may have mentioned</p> <p>11 this briefly, although he, as well, focused</p> <p>12 primarily on homicides.</p> <p>13 Q In that same section, you talk about cost</p> <p>14 benefit analysis.</p> <p>15 And you referred to that a few times in</p> <p>16 your testimony already, right?</p> <p>17 A Uh-huh.</p> <p>18 Q Now --</p> <p>19 A Yes.</p> <p>20 Q Yes.</p> <p>21 You started to describe what you mean</p> <p>22 generally by cost benefit analysis.</p>	<p style="text-align: right;">Page 144</p> <p>1 right?</p> <p>2 A Yes, the cost I'm evaluating are those</p> <p>3 ones that were identified by the original expert</p> <p>4 witness reports.</p> <p>5 Q Okay. And what's the benefit portion of</p> <p>6 that equation, in your research?</p> <p>7 A Ah. Okay. To clarify, so we're -- it</p> <p>8 depends which side you're looking at, whether</p> <p>9 you're considering the cost of it, so the -- the --</p> <p>10 their claim is that the cost of not having this law</p> <p>11 would be having these homicides. You can flip that</p> <p>12 around and say the benefits of having this law</p> <p>13 would be preventing these homicides.</p> <p>14 So when I initially set out this</p> <p>15 discussion, my -- you think of the law as the</p> <p>16 positive thing here you're -- you're asking about</p> <p>17 The benefit, pun -- putative benefits of that law,</p> <p>18 I take it from their reports, are you save lives,</p> <p>19 that we were just talking about.</p> <p>20 From my perspective, when I think about</p> <p>21 the cost of the law, I'm asking what are the --</p> <p>22 what are the costs to the hundreds of thousands of</p>
<p style="text-align: right;">Page 143</p> <p>1 What is the cost -- define the cost in</p> <p>2 the cost benefit analysis that you conducted in</p> <p>3 this case. What's the --</p> <p>4 A Right.</p> <p>5 Q -- cost mean?</p> <p>6 A So the -- the cost I focused on were the</p> <p>7 costs that the expert witnesses focused on. So</p> <p>8 Dr. Zeoli and Dr. Hamilton, you know, focused their</p> <p>9 reports on this cost of homicide, the -- that was</p> <p>10 the -- the cost that I was myself rebutting.</p> <p>11 The -- and accidentally, I had -- I have</p> <p>12 seen injury rates and -- and injury rates are</p> <p>13 multiples, not orders of magnitude more. So the --</p> <p>14 even looking at injury rates, we're again talking</p> <p>15 a -- a very small deviation from the overall</p> <p>16 picture. So I'm -- I'm happy to take those into</p> <p>17 account. That -- that doesn't change the overall</p> <p>18 analysis.</p> <p>19 Q So the cost in your cost benefit analysis</p> <p>20 is the -- is the number, the statistics and data</p> <p>21 dealing with homicides in the DV context or the</p> <p>22 child unintentional accidental death context,</p>	<p style="text-align: right;">Page 145</p> <p>1 handgun owners who have their -- their privacy</p> <p>2 violated, have their details disclosed.</p> <p>3 So -- so we can -- we can think in the</p> <p>4 broadest terms of the law what are the -- the puted</p> <p>5 (sic) benefits to health and safety, to homicide</p> <p>6 rates and that sort of thing; what are the costs to</p> <p>7 those who are burdened by this disclosure regime.</p> <p>8 Q When you looked at the DV issue -- and</p> <p>9 when I say DV --</p> <p>10 A Domestic violence --</p> <p>11 Q -- you understand that?</p> <p>12 A Yeah.</p> <p>13 Q Okay. Shorthand.</p> <p>14 When you looked at the DV issue, the</p> <p>15 benefits discussed by Dr. Zeoli, you looked at the</p> <p>16 homicide rates with respect to DV incidents?</p> <p>17 A That's correct.</p> <p>18 Q Did you look at -- and I think I asked</p> <p>19 you this -- either the injury rates and/or did you</p> <p>20 look at the rates of nonphysical harms caused by</p> <p>21 weapons, handguns -- excuse me --</p> <p>22 A So --</p>

<p style="text-align: right;">Page 146</p> <p>1 Q -- handguns in the context of DV -- so      2 terrorizing, threatening, things of that nature --      3 did you look at any data with respect to that?</p> <p>4 A I didn't look at that, nor did I look at      5 the benefits of domestic abusees using firearms to      6 defend themselves, brandishing firearms to defend      7 themselves. I know there's a sub literature on      8 that. I -- you know, it's interesting question.      9 And it's actually not obvious to me whether the      10 cost or benefits are more on either side. I -- I      11 know there's many documented cases of people who --      12 women who've been abused using handguns in their      13 defense.</p> <p>14 So there's tertiary questions here that      15 they weren't flagged by the initial reports as      16 the -- any of their concerns. Further analysis      17 could look at what are the residual benefits to      18 domestic abusees, as well as potential, you know,      19 injury costs --</p> <p>20 Q But you --</p> <p>21 A -- on either side.</p> <p>22 Q -- would you agree with me that if you</p>	<p style="text-align: right;">Page 148</p> <p>1 equation is, you know, what are the most -- the      2 most serious concerns, the ones identified by the      3 expert witness reports. Clearly death is a -- is      4 an enormous -- you know, something you're not --      5 you're not gonna heal from. That's a -- you know,      6 a fundamental huge issue. And how do we evaluate      7 those. And this is -- this is the fundamental      8 thing that I'm weighing.</p> <p>9 You know, it'd be -- it could be      10 worthwhile drilling down more of those. You're      11 gonna get less resolution, though, the more you try      12 to account for things that are much harder to      13 measure and register.</p> <p>14 Q Right. But if you're creating the cost      15 benefit analysis -- and it is your cost benefit      16 analysis that you created through this report -- if      17 you didn't include the benefits that were      18 specifically highlighted by Dr. Zeoli and Dr. Sege      19 and Professor Hamilton's reports, then isn't that      20 thumbing the scale on your analysis insofar as      21 Dr. Zeoli specifically mentions both homicides,      22 injuries, and this concept of threat, which you</p>
<p style="text-align: right;">Page 147</p> <p>1 set up a cost benefit scale, the only value to the      2 scale is if good information goes into the scale,      3 correct?</p> <p>4 A It's a question of priorities importance.      5 Death seems to me the biggest question here.</p> <p>6 Q Right.</p> <p>7 A How many deaths can you prevent is a big,      8 important question. There are injuries. Again,      9 now you might get, you know, serious injuries,      10 slight injuries, fear. The questions get more      11 complicated: How you gonna value, how you're gonna      12 weigh those, how you gonna get the quality of the      13 discrimination that's worthwhile.</p> <p>14 So, yeah, there's interesting questions      15 to be pursued here. That's --</p> <p>16 Q But --</p> <p>17 A -- again, and it's on both sides. So      18 there's a certain symmetry here. I don't know all      19 the benefits of handgun ownership to abusees. I      20 don't include that. Now, that might be difficult      21 to get to, again difficult to weigh.</p> <p>22 But what I wanna make sure is -- in this</p>	<p style="text-align: right;">Page 149</p> <p>1 discuss is the threats that cause, you know,      2 emotional damages to victims of domestic violence,      3 and Dr. Sege specifically addresses injuries?</p> <p>4 So if you take those out of the equation,      5 are you, like I said, thumbing the scale --</p> <p>6 A No, no --</p> <p>7 Q -- on your cost --</p> <p>8 A -- no.</p> <p>9 Q -- benefit scale?</p> <p>10 A No. Just to be clear, the things you're      11 talking about, first of all, pale in comparison to      12 death.</p> <p>13 Q In -- in what regard, though, pale in      14 comparison? Severity or --</p> <p>15 A Yes, I --</p> <p>16 Q -- finality?</p> <p>17 A -- I -- if -- if I give you the question:      18 Would you rather have a loved one killed or have a      19 loved one injured?, is that a real -- it strikes me      20 that that's -- we think severity importance, death      21 is more serious than injury.</p> <p>22 We have to consider if we're gonna take</p>

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<p>1 an injury, how are you discriminating different      2 types of injury, different severity. But the --      3 the larger picture here is these are -- these are      4 small error bars around a really, really, really      5 small number to begin with.</p> <p>6 So we can even hypothesize -- again,      7 we're not taking into account -- the point is,      8 there's gonna be error on both sides. And we're      9 not taking in account the value as defensive uses      10 of firearms by -- by domestic abusees. So we can      11 stipulate there's gonna be some err on either side.      12 It may be 99.9993 or 92 or 97.</p> <p>13 I mean you're arguing here about, you      14 know, can we get more resolution on this extremely      15 small number, which the -- the question is, you      16 know, how -- is -- is it gonna tip the scale of the      17 larger analysis. And --</p> <p>18 Q But how do you know that?</p> <p>19 I mean where is your data that -- where      20 is the data in this report that suggests that that      21 number would only move from 99.99 to 99.93 if you      22 included all of the harms discussed by Zeoli and</p>	<p>1 fair?      2 A I -- I looked it, and deemed this      3 inconsequential. And if we're talking about      4 multiple again, not orders of magnitude.      5 Q Okay. And then just to be clear, though,      6 when you throw out numbers of 99.93 or 94, that's      7 just a guess on your part; you don't have any firm      8 data at this point to support that --</p> <p>9 A No --</p> <p>10 Q -- right?</p> <p>11 A -- no, even -- even if you accept the --      12 the -- if you wanna include again injuries of      13 unknown severity, which is even what Dr. Sege's      14 publicly available data shows, so, you know, you      15 can have somebody grazed. You can have somebody      16 lose an arm. And it's a question of, again, how      17 you're gonna weigh that all consistently.</p> <p>18 The -- even if you're gonna accept      19 multiples there, you're still talking -- I mean I      20 had to round -- I mean it's nine -- it's -- it's      21 actually 99.999 -- something like 4. You're not      22 gonna -- you're not gonna get the movement even</p>
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<p>1 Sege?</p> <p>2 I mean do you have data to support that      3 figure, or is that just a guess at this point on      4 your part because you haven't looked at it?</p> <p>5 A I would love to get access to that data,      6 which New York State actually collects but doesn't      7 permit the public to access. So that would be --      8 that would be wonderful, even as a researcher, to      9 obtain that. But New York State has decided that      10 that sort of contact data regarding domestic      11 abusers shouldn't be publicly available. Because,      12 apparently, there's a privacy interest that abusers      13 have. So I can't get access to that data.</p> <p>14 Incidentally, though, the court's can,      15 which also domestic abusees can in the context of      16 the court hearings.</p> <p>17 Q Well, Dr. Sege accessed data with respect      18 to injuries and with respect to injuries --</p> <p>19 A Over children.</p> <p>20 Q -- accidental guns over children. So      21 that information, at least, was accessible.      22 But you didn't look at that, is that</p>	<p>1 with that statistic, if you're adding in, you know,      2 those multiples that are injured or whatnot.</p> <p>3 Q Well --</p> <p>4 A So that's what -- what gives me      5 extraordinary confidence in these estimates, is      6 we're -- we're talking about -- you're talking      7 about rounding errors. The overall picture is the      8 same.</p> <p>9 Q Why not include them, if the rounding      10 errors for -- at least for completeness of your      11 analysis?</p> <p>12 A The -- the precisely the problem is it's      13 very difficult to evaluate. It's difficult both to      14 evaluate the defensive value of these guns to      15 domestic abusees. It's also difficult to evaluate      16 the severity of injury to know if we're comparing      17 apples to oranges. Death count is pretty clear.      18 And it's what the opposing expert and supports      19 focused on. It was the -- the main claim that they      20 made.</p> <p>21 And it turns out, upon scrutiny, not only      22 are the numbers a little lower than some of them</p>

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1 suggested, but when you look at the larger context,  
 2 we're talking about vanishing these small number of  
 3 incidents in the context of, you know, many other  
 4 risky things that we deal with in everyday life.  
 5 Q Did you consider the data that over  
 6 20,000 American children under 19 present for care  
 7 in an emergency room for a firearm-related injury  
 8 on an annual basis?  
 9 A Yeah, and what was the age again? I just  
 10 want to hear that.  
 11 Q Under 19.  
 12 A Under 19. No. And that's partly  
 13 because -- well, it's a difficult question, how to  
 14 consider an 18-year-old who goes to the emergency  
 15 room for a gunshot or for gun violence.  
 16 Q Uh-huh.  
 17 A We're -- we're not talking about -- well,  
 18 we could be talking about many things at that  
 19 point.  
 20 Q Okay. And when you talk about severity  
 21 of those potential injuries, did you ever encounter  
 22 a statistic that shows that over 50 percent of

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1 firearms, which, of course, would be a big thing to  
 2 consider on the other side. But given the  
 3 difficulties of estimating that and vetting  
 4 those -- that with great accuracy, I decided not to  
 5 put that on the scale on the other side as well.  
 6 Q Right. What I'm wondering, Doctor, is  
 7 that this is your analysis. You're the one who  
 8 created the cost benefit analysis paradigm.  
 9 So that was your decision not to include  
 10 the defensive values, correct?  
 11 A Yeah, precisely for the reasons I just  
 12 said.  
 13 Q Okay.  
 14 A If there's -- if there's enormous  
 15 difficulty and controversy about measuring, but --  
 16 but we have some confidence that we at least  
 17 understand the order of magnitude that could be on  
 18 either side, this is not a -- a concern at all for  
 19 my overall --  
 20 Q Okay.  
 21 A -- analysis and conclusions.  
 22 Q So just to be clear, it was your decision

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1 children who are hospitalized with firearm-related  
 2 injuries are discharged from the hospital with a  
 3 permanent disability? Is that something you  
 4 considered?  
 5 A Nope.  
 6 Q Okay. And when you talk about the  
 7 magnitude -- and I believe you posed the question  
 8 of, you know, would you rather a -- someone -- a  
 9 loved one be -- sustain a fatality or an injury,  
 10 did you contemplate the cost and/or possibility of  
 11 a life-long disability when you did your statistics  
 12 and considerations for this report?  
 13 A No. I focused on deaths.  
 14 Q Okay. And we can agree, though, that  
 15 while death is certainly more final, a permanent  
 16 disability is fairly severe as well, with orders of  
 17 magnitude, correct?  
 18 A It is -- permanent disability is  
 19 certainly a bad thing.  
 20 Q Okay.  
 21 A Not only did I not account for that, I  
 22 didn't account for the value of definitive use of

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1 to limit the benefit side of the equation to just  
 2 fatalities in both DV and the pediatric realm, and  
 3 to exclude injuries and/or potentially other  
 4 nonphysical injuries in the DV context, correct?  
 5 A It was indeed my decision to focus on  
 6 facilities, which are -- are measurable and  
 7 transparent, and to exclude both the potential  
 8 positive value of the defensive use of firearm as  
 9 well as potential negative value of -- of injuries  
 10 that are accounted for in different ways.  
 11 Q Okay. And just to be clear, are you not  
 12 a -- do you consider an expert in domestic  
 13 violence?  
 14 A No.  
 15 Q Okay. Are you familiar with the  
 16 psychological, nonphysical ramifications from  
 17 domestic violence at all?  
 18 A I'm aware there's a literature that  
 19 examines it.  
 20 Q Okay. And are you aware that threats  
 21 and/or badgering have a psychological harm to  
 22 domestic violence victims as well as physical

<p>1 injury?</p> <p>2 A I am.</p> <p>3 Q Okay. Now, you --</p> <p>4 MR. DAGUE: And I'll be done in a few 5 minutes.</p> <p>6 MS. CONNELL: I was going to say, the 7 poor guys over there.</p> <p>8 MR. DAGUE: I know. I know. But I have 9 one -- thanks.</p> <p>10 BY MR. DAGUE:</p> <p>11 Q Now, you proposed this cost benefit 12 analysis.</p> <p>13 And what I was wondering is by proposing 14 that, how many incidents of domestic violence 15 involving a licensed handgun would you need to see 16 to determine that the benefits outweigh the costs, 17 in real numbers?</p> <p>18 A It depends on many other things. I'd 19 need to see what regime was enforcing that. I'd 20 need to see -- I mean how -- there's a lot of other 21 questions that would go into figuring, to making 22 that determination.</p>	<p>Page 158</p> <p>1 So, again, I try to think analogously, 2 like how many lives could we save if we required 3 everybody who has a -- an STD that's communicable 4 to be publicly registered. That number's probably 5 huge. So I'm just trying to think, you know, 6 what -- we don't allow that. But clearly -- I 7 mean, you know, at a certain time in certain 8 cities, certain places, that might have saved, oh, 9 I don't know, ten -- a hundred -- hundreds, maybe 10 thousands, tens of thousands of lives.</p> <p>11 So I'd -- I'd have to think about it 12 because -- yeah, there's a lot of invasions of 13 privacy that I think could potentially save a lot 14 of lives. I'm not sure how many people, for 15 example, I'd -- like how many HIV patients I would 16 require to be publicly disclosed if I knew it would 17 save, you know, "X" many lives. I'd have to think, 18 give more thought to that.</p> <p>19 Q Doctor, I appreciate the discussion on 20 STDs and -- and AIDS, but -- but I'm talking about 21 this case. And I'm --</p> <p>22 A Uh-huh.</p>
<p>1 Q Yeah, but, Doctor, you've proposed the 2 cost benefit analysis. And you've said that you 3 have made a determination that this law doesn't tip 4 the benefits above the cost.</p> <p>5 So what I'm asking you is -- and you say 6 99 --</p> <p>7 A Ah.</p> <p>8 Q -- .99 --</p> <p>9 A Yeah.</p> <p>10 Q -- what I'm wondering is where's the line 11 and --</p> <p>12 A Oh, yeah, well --</p> <p>13 Q -- what's the percentage?</p> <p>14 What's the percentage?</p> <p>15 A The number, or the percentage?</p> <p>16 Q Well, what's the percentage?</p> <p>17 What would you have to see for you to 18 be -- determine from a statistical data expertise 19 that the benefit outweighs the cost?</p> <p>20 A Well, we actually haven't talked yet 21 about the -- the ben -- the other side; that is, 22 what's -- what's at stake.</p>	<p>Page 159</p> <p>1 Q -- talking about your proposed cost 2 benefit and your data.</p> <p>3 And what I'm wondering is you have opined 4 that the cost does not out -- the benefit does not 5 outweigh --</p> <p>6 A Uh-huh.</p> <p>7 Q -- the benefits articulated by Zeoli, 8 Sege, and Hamilton do not outweigh the costs. And 9 what I'm wondering is by proposing that, you must 10 have a line where you believe the benefits outweigh 11 the cost.</p> <p>12 And what is that line that the state 13 would have to hit for you to change your opinion?</p> <p>14 A Sure. So if it -- if it saved more lives 15 than had died from AIDS over the last 30 years, 16 then it would at least be above the standard that 17 we've already said. It at least has to exceed that 18 standard.</p> <p>19 Q Okay.</p> <p>20 A So that would be, you know --</p> <p>21 Q Okay.</p> <p>22 A -- significant. But we've already said</p>

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<p>1 we won't allow, say, in other courses of the law,</p> <p>2 invasions of privacy to save that many people. So</p> <p>3 it would have to at least exceed that, I would</p> <p>4 think, if we're gonna be consistent legally --</p> <p>5 Q Okay.</p> <p>6 A -- thinking about the cost and benefits</p> <p>7 of privacy invasion.</p> <p>8 Q Okay. So that's the line, that the line</p> <p>9 is over the last 30 years, the State would have</p> <p>10 to --</p> <p>11 A Now, that's.</p> <p>12 Q -- demonstrate --</p> <p>13 A -- on a national level.</p> <p>14 Q On a national level?</p> <p>15 A Yeah, I think, yes.</p> <p>16 Q Okay. So in order for you to change your</p> <p>17 opinion, the State would have to demonstrate that</p> <p>18 on a national level that more people have died from</p> <p>19 domestic -- just died -- from domestic violence</p> <p>20 and/or unintentional gun deaths of children than</p> <p>21 how many died from AIDS over the last 30 years to</p> <p>22 justify this law, is that fair?</p>	<p>1 And so, again, I'm saying as a minimum</p> <p>2 standard, well, at least would have to be bigger</p> <p>3 than, because you've already established a</p> <p>4 pretty -- you know, a strong precedent there.</p> <p>5 Q Okay.</p> <p>6 MR. DAGUE: All right. I've kept you</p> <p>7 guys from your lunch long enough. Let's take -- do</p> <p>8 you want to do a half hour, come back at 1:00,</p> <p>9 1:05?</p> <p>10 MR. DAVIS COOPER: We're fine with that.</p> <p>11 (Whereupon, at 12:34 p.m., a</p> <p>12 luncheon recess was taken.)</p> <p>13 A F T E R N O O N S E S S I O N</p> <p>14 (1:10 p.m.)</p> <p>15 Whereupon,</p> <p>16 WILLIAM ENGLISH, Ph.D.,</p> <p>17 was recalled as the witness and, having been</p> <p>18 previously sworn, was examined and testified</p> <p>19 further as follows:</p> <p>20 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>21 CONTINUED</p> <p>22 MR. DAGUE: Okay. Back on the record.</p>
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<p>1 A I would say at least -- so this is a -- a</p> <p>2 lower boundary, at least, given our existing</p> <p>3 legal -- yeah.</p> <p>4 Q Okay.</p> <p>5 A However, just be clear here, there's also</p> <p>6 a claim -- and this would have to be substantiated</p> <p>7 as well -- that disclosure actually prevented these</p> <p>8 things.</p> <p>9 Q Right.</p> <p>10 A So I -- we're assuming we're stipulating</p> <p>11 for this thought experiment that say public</p> <p>12 registry of those with a communicable disease would</p> <p>13 help people know not to say engage in behaviors</p> <p>14 that might transmit that unwittingly. And so,</p> <p>15 again, that's a -- that's a big caveat.</p> <p>16 Q Right.</p> <p>17 A But, again, I would think, you know,</p> <p>18 that's a good public policy question, when there's</p> <p>19 all these other areas of our law where we -- we --</p> <p>20 it doesn't even concern us that we don't allow</p> <p>21 invasions of privacy, even though it -- it seems</p> <p>22 like it would save all these lives.</p>	<p>1 BY MR. DAGUE:</p> <p>2 Q Welcome back, Doctor.</p> <p>3 A Thank you.</p> <p>4 Q I'm going to direct your attention to</p> <p>5 page 2 of your report, Defendants' Exhibit 1. And</p> <p>6 looking at that first paragraph, the paragraph that</p> <p>7 begins "finally."</p> <p>8 A Uh-huh.</p> <p>9 Q So in the second sentence you say, First,</p> <p>10 there are many indicators of risk that are much</p> <p>11 more predictive of the outcomes that these authors</p> <p>12 want to avoid.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q All right. And I wanted to ask you a</p> <p>16 couple follow-ups on that.</p> <p>17 What are the many indicators that you</p> <p>18 reference here?</p> <p>19 A Yeah, so harking back to where we left</p> <p>20 off, so disease, that could be an indicator of</p> <p>21 risk. You know, people have disease, people who</p> <p>22 haven't been vaccinated.</p>

<p>1     Q I -- yeah.</p> <p>2     A And just to finish this, the outcomes</p> <p>3 these authors want to avoid. They want to avoid --</p> <p>4 so outcomes these authors want to avoid is how,</p> <p>5 that -- the sentence proceeds. Death is a bad</p> <p>6 thing. We want to avoid a death. Okay. There are</p> <p>7 many indicators of risk, things like disease</p> <p>8 indicators that are pretty predictive of some</p> <p>9 really bad out -- health outcomes, death, you know,</p> <p>10 injury, disease. And yet even in those cases where</p> <p>11 the risks are much more -- are higher and more</p> <p>12 directly linked, the State does not make a matter</p> <p>13 of public record.</p> <p>14     Q Okay. Let's dig in on this a little bit</p> <p>15 more.</p> <p>16         So you're saying that there are other</p> <p>17 indicators of risk other than handgun -- licensed</p> <p>18 handgun ownership that are more predictive of the</p> <p>19 outcomes of these authors --</p> <p>20     A Uh-huh.</p> <p>21     Q -- Zeoli, Hamilton, Sege -- want to</p> <p>22 avoid --</p>	<p style="text-align: right;">Page 166</p> <p>1 it's interesting that even on matters of risk that</p> <p>2 are highly predictive of those, there are many</p> <p>3 instances where we believe they -- we shouldn't</p> <p>4 violate privacy to try to mitigate those risks,</p> <p>5 because we think privacy has a -- a value of</p> <p>6 importance.</p> <p>7     Q Okay. And so just so I'm clear, we're</p> <p>8 talking about this is -- you're making a general</p> <p>9 statement here as to risk indicators. You're</p> <p>10 not -- you're not saying that there are more apt or</p> <p>11 relevant risk indicators that the authors of the</p> <p>12 reports didn't look at that equal or result in</p> <p>13 these outcomes they discuss.</p> <p>14         That's not what you're saying?</p> <p>15     A I -- you know, it's not a narrowly</p> <p>16 construed -- I'm not talking just about gun stuff</p> <p>17 here.</p> <p>18     Q Oh.</p> <p>19     A I'm saying as a general matter, there's</p> <p>20 all sorts of risky things in our society.</p> <p>21     Q Okay.</p> <p>22     A Clearly, these people, you know, care</p>	<p style="text-align: right;">Page 168</p> <p>1 about death and injury. And for some reason, we --</p> <p>2 we don't violate privacy even when it might be</p> <p>3 useful to prevent some of those.</p> <p>4     Q Okay. Now, you mentioned disease.</p> <p>5         Is this a reference to your discussion of</p> <p>6 AIDS and STDs?</p> <p>7         Is that the -- are you thinking the same</p> <p>8 concept there?</p> <p>9     A Same concept. I mean you can think about</p> <p>10 it in terms of vaccines. You can -- I mean you can</p> <p>11 think about quarantines and flu season. You know,</p> <p>12 there's many, many ways --</p> <p>13     Q Right</p> <p>14     A -- in which you could think of public</p> <p>15 health concern that we have that we protect --</p> <p>16     Q Now --</p> <p>17     A -- privacy.</p> <p>18     Q -- wouldn't you agree with me that</p> <p>19 applying your cost benefit analysis in these -- in</p> <p>20 quarantines, that the -- the cost of a quarantine</p> <p>21 would be considerably greater than the cost at</p> <p>22 issue here, which is the public availability</p>
<p>1     A Yes.</p> <p>2     Q -- right?</p> <p>3         So you said disease, but I -- is that a</p> <p>4 mis -- is that a misnomer?</p> <p>5         I mean is disease -- disease is -- would</p> <p>6 disease be a risk indicator in this context of</p> <p>7 avoiding unintentional shootings or avoiding use of</p> <p>8 handguns for domestic violence?</p> <p>9     A Just to be clear, this may be a</p> <p>10 misunderstanding of rhetoric here.</p> <p>11     Q Yeah.</p> <p>12     A I'm saying as a general matter, there's a</p> <p>13 lot of things these authors would probably agree we</p> <p>14 want to avoid. Some of them are specifically, you</p> <p>15 know, things their reports are aimed at. You know,</p> <p>16 death and injury is -- Sege's a doctor. He</p> <p>17 probably wants to prevent disease. But that's --</p> <p>18 maybe -- it's you're reading less -- more into this</p> <p>19 than I intended.</p> <p>20         I'm saying clearly there's also the bad</p> <p>21 outcomes these authors agree to, sometimes</p> <p>22 explicitly, in the very reports I'm citing. And</p>	<p style="text-align: right;">Page 167</p> <p>1 about death and injury. And for some reason, we --</p> <p>2 we don't violate privacy even when it might be</p> <p>3 useful to prevent some of those.</p> <p>4     Q Okay. Now, you mentioned disease.</p> <p>5         Is this a reference to your discussion of</p> <p>6 AIDS and STDs?</p> <p>7         Is that the -- are you thinking the same</p> <p>8 concept there?</p> <p>9     A Same concept. I mean you can think about</p> <p>10 it in terms of vaccines. You can -- I mean you can</p> <p>11 think about quarantines and flu season. You know,</p> <p>12 there's many, many ways --</p> <p>13     Q Right</p> <p>14     A -- in which you could think of public</p> <p>15 health concern that we have that we protect --</p> <p>16     Q Now --</p> <p>17     A -- privacy.</p> <p>18     Q -- wouldn't you agree with me that</p> <p>19 applying your cost benefit analysis in these -- in</p> <p>20 quarantines, that the -- the cost of a quarantine</p> <p>21 would be considerably greater than the cost at</p> <p>22 issue here, which is the public availability</p>	<p style="text-align: right;">Page 169</p>

<p>1 through FOIL of individual's names?</p> <p>2 A Just be -- I'm -- I'm listing many sorts</p> <p>3 of examples here. I'm --</p> <p>4 Q Yeah, that's --</p> <p>5 A -- just giving --</p> <p>6 Q -- fine --</p> <p>7 A -- you a --</p> <p>8 Q -- I'm just -- I'm just digging in on one</p> <p>9 them, which you --</p> <p>10 A It would depend on the nature of the</p> <p>11 quarantine.</p> <p>12 Q Okay. Would you generally -- would you</p> <p>13 ever find a physical quarantine of an individual</p> <p>14 less restrictive than their name being publicly</p> <p>15 available through FOIL?</p> <p>16 Can you think of a situation where that</p> <p>17 would happen?</p> <p>18 A I'd have to think about the details of</p> <p>19 it. Generally and for the most part, physical</p> <p>20 restraint, I would think would be worse than</p> <p>21 publishing names.</p> <p>22 Q Now, these risk -- these indicators of</p>	<p>Page 170</p> <p>1 Do you find, as a general matter, the</p> <p>2 concept of publicizing individual's names based</p> <p>3 upon their medical condition more or less</p> <p>4 problematic than publicizing an individual's name</p> <p>5 who owns a gun --</p> <p>6 A Well --</p> <p>7 Q -- via FOIL?</p> <p>8 A -- it would depend.</p> <p>9 Q Okay. What types of factors would it</p> <p>10 depend upon?</p> <p>11 A Oh, there's type of medical condition,</p> <p>12 how communicable it is, whether somebody had</p> <p>13 responsibility in acquiring it, or whether it's</p> <p>14 curable. I mean that's just the tip of the</p> <p>15 iceberg. I'm -- I -- I could -- possibly many,</p> <p>16 many factors --</p> <p>17 Q Right.</p> <p>18 A -- would influence that kind of decision.</p> <p>19 Q Now, is there a fundamental distinction</p> <p>20 between those two comparators, in the fact that --</p> <p>21 say for STDs, or mental health, as you mention in</p> <p>22 your report, that those are generally nonvoluntary</p>
<p>1 risk or risk indicators that you talk about, are</p> <p>2 all of those addressable through some sort of</p> <p>3 public disclosure?</p> <p>4 The examples --</p> <p>5 A So --</p> <p>6 Q -- that you're --</p> <p>7 A -- so I --</p> <p>8 Q -- thinking of.</p> <p>9 A -- think, you know, some are, so --</p> <p>10 Q All right.</p> <p>11 A Yeah, so my point -- my point is as a</p> <p>12 general matter here. Again, I'm just saying</p> <p>13 there's a lot of that outcome that we'd want to</p> <p>14 avoid. There's various risk indicators. We can</p> <p>15 think of different ways of dealing with that risk.</p> <p>16 We seem to have high bars. Certainly there are</p> <p>17 some instances where disclosure might be a way to</p> <p>18 mitigate that.</p> <p>19 Q Uh-huh.</p> <p>20 A We -- we don't pursue.</p> <p>21 Q Do you find -- and you've mentioned AIDS</p> <p>22 or -- or STDs.</p>	<p>Page 171</p> <p>1 or things that you obtain non-voluntarily versus a</p> <p>2 gun, which is a voluntary action to purchase?</p> <p>3 A Well, I mean STDs I suppose it begs the</p> <p>4 question, you know. Potentially -- I mean you --</p> <p>5 you could make it into something that you'd have</p> <p>6 more voluntary control over precisely through</p> <p>7 disclosure. And, you know, again, you could</p> <p>8 imagine many different circumstances, some of which</p> <p>9 there is some foreknowledge, some which there is</p> <p>10 accepted risk.</p> <p>11 So -- so, yeah, I think the -- and same</p> <p>12 thing with mental illness. It turn -- I mean much</p> <p>13 of it's inherited. There's also things one can do</p> <p>14 to develop psychosis, you know, drugs and whatever.</p> <p>15 So clearly there's a variety of reasons somebody</p> <p>16 might be in -- in these various states. But the --</p> <p>17 not always the obvious or the case that</p> <p>18 voluntariness distinguishes it.</p> <p>19 Q Do you find that the infringement in</p> <p>20 privacy would be greater for publicizing</p> <p>21 individuals who have a nonvoluntary medical</p> <p>22 condition than for publicizing names of individuals</p>

<p style="text-align: right;">Page 174</p> <p>1 who have voluntarily decided to purchase a handgun?</p> <p>2 A It depends. It depends. Like I think --</p> <p>3 I mean, again, I'm trying to think of test cases,</p> <p>4 analogies. You know, it's -- somebody could, you</p> <p>5 know, voluntarily get an abortion, I suppose.</p> <p>6 Q Let me pose a specific hypothetical.</p> <p>7 A Uh-huh.</p> <p>8 Q Maybe that'll help.</p> <p>9 Would you find that publicizing the name</p> <p>10 of an individual who has schizophrenia and lives in</p> <p>11 the community is more of an infringement on privacy</p> <p>12 than publicizing the name of someone who</p> <p>13 voluntarily decided to apply for a handgun permit</p> <p>14 and purchase a handgun?</p> <p>15 A Again, I might like a few more details</p> <p>16 about who this person is concerning why -- what --</p> <p>17 their group home, what's going on there. But as a</p> <p>18 general matter, I would say both strike me as</p> <p>19 inappropriate. I'm -- I'm not sure how to rank</p> <p>20 their inappropriateness.</p> <p>21 Q Sure.</p> <p>22 A But without further information, it's</p>	<p style="text-align: right;">Page 176</p> <p>1 Q Now, you say that there are many</p> <p>2 indicators of risk that are much more predictive of</p> <p>3 the outcomes that the authors want to avoid, but</p> <p>4 the State does not, as matter of public policy,</p> <p>5 make those public.</p> <p>6 Is it your position that because there</p> <p>7 are other -- there are risk factors that the State</p> <p>8 doesn't make public that the State shouldn't make</p> <p>9 any risk factors public?</p> <p>10 A No, I'm not making a -- a claim that</p> <p>11 that's -- it's that narrow. I'm observing,</p> <p>12 however, that we clearly do protect privacy in all</p> <p>13 these other domains. And as a standard, it's worth</p> <p>14 comparing what's -- what's different or the same.</p> <p>15 And it just strikes me as -- as something worth</p> <p>16 consideration.</p> <p>17 What is the standard upon which we think</p> <p>18 it's okay to, you know, invade privacy in various</p> <p>19 ways? How are those to be weighed off?</p> <p>20 And -- and I'm just observing that there</p> <p>21 are all sorts of places where we seem to have very</p> <p>22 high standards in that regard.</p>
<p style="text-align: right;">Page 175</p> <p>1 hard to --</p> <p>2 Q Okay.</p> <p>3 A -- you know, compare what -- compare</p> <p>4 these.</p> <p>5 Q So do you believe that the voluntary or</p> <p>6 involuntary nature of the risk factor has any</p> <p>7 bearing on the disclosure of the factor?</p> <p>8 A Yeah, it strikes me, as a general</p> <p>9 principal, it's -- it's totally unclear. I, you</p> <p>10 know, can voluntarily not vaccinate my kids. I</p> <p>11 suppose that's a choice. You can also imagine that</p> <p>12 being very useful information for public health</p> <p>13 officials. And that can also be very embarrassing</p> <p>14 from a -- a public opinion perspective.</p> <p>15 You know, there's various others'</p> <p>16 behaviors that are -- clearly are voluntary.</p> <p>17 Decisions to get an abortion are voluntary. It</p> <p>18 also might have a variety of implications for</p> <p>19 public, you know, shame or -- or scrutiny. And so</p> <p>20 I -- the voluntariness isn't obvious to me how</p> <p>21 that -- I think it -- it's just gonna be a</p> <p>22 case-by-case situation.</p>	<p style="text-align: right;">Page 177</p> <p>1 Q Right. But the ones I had asked you</p> <p>2 about, the other -- the other areas that we -- that</p> <p>3 we believe that New York State or other governments</p> <p>4 protect, despite being a risk factor, you would</p> <p>5 agree with me that those -- there are distinctions</p> <p>6 between those and ownership of a handgun?</p> <p>7 A No. What do you -- what --</p> <p>8 Q Okay.</p> <p>9 A -- what do you mean?</p> <p>10 Q So that --</p> <p>11 A And -- and maybe, yeah --</p> <p>12 Q Yeah.</p> <p>13 A -- I'm just not sure.</p> <p>14 Q Right.</p> <p>15 A I haven't heard any yet.</p> <p>16 Q The ones you talked about, specifically</p> <p>17 mental health and STDs --</p> <p>18 A And vaccines and abortion.</p> <p>19 Q Right, but let's just focus on those two</p> <p>20 for now. I'll get to --</p> <p>21 A Okay.</p> <p>22 Q -- vaccines --</p>

<p>1 A Sure.</p> <p>2 Q -- and abortion.</p> <p>3 But you would agree with me there are 4 fundamental distinctions on both sides between 5 having a mental health issue and voluntarily owning 6 a gun, right?</p> <p>7 I mean there are distinctions; these are 8 not necessarily analogous privacy interests; is 9 that right?</p> <p>10 A No, it's not clear at all. I mean the -- 11 the underlying question is in what sense are they 12 analogous and what sense are they not. I mean, you 13 know, by definition, they -- these are different 14 topics. So that's sort of a truism, a tautology.</p> <p>15 The question now is in what sense are they similar 16 and in what sense are they different.</p> <p>17 You know, and -- and the claim is here is 18 that there's many things, at least on this question 19 of threats to public health and safety. In fact, 20 the -- the concerns are more severe. And so I 21 guess the -- it begs a question of: In what 22 respects do you think the privacy interests are</p>	<p style="text-align: right;">Page 178</p> <p>1 facie question is are these many examples in 2 context, why would privacy not be important in this 3 context.</p> <p>4 Q In that same section, that same paragraph 5 on 2, you go on to, I think, articulate what you 6 just said somewhat, when you state, The state has 7 clearly recognized that the potential benefits of 8 publicizing sensitive information must be weighed 9 against the cost to privacy, and our legal system 10 has set a high bar in that regard.</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q What's the high bar that you're talking 14 about there?</p> <p>15 A I mean the -- the examples I've just 16 mentioned, that it -- it's interesting there, you 17 know. You almost have to, you know, think about -- 18 well -- well, if you think about the range of 19 things that we actually might be able to protect if 20 we disclosed, you know, all sorts of issues of 21 privacy.</p> <p>22 I would love to know how much alcohol</p>
<p>1 different? And it's -- it's not clear to me on the 2 face of it, from anything you've said, that these 3 are different in a relevant way.</p> <p>4 I mean the voluntary thing, I think that 5 doesn't go very deep or far. I don't know if 6 there's something else you've touched on. Maybe 7 I've missed it. But it's -- no, it's not obvious 8 to me at all that these aren't -- are not 9 appropriate comparisons.</p> <p>10 Q Okay. So your point with risk factors 11 is -- would you agree that just because we, as a 12 society, cannot legislate to avoid all risk factors 13 doesn't mean that we don't attempt to legislate to 14 avoid some risk factors; is that fair?</p> <p>15 A At a -- at a level distraction, yeah, the 16 argument needs to be made how severe are the 17 consequence, what can we prevent through this, and 18 what are the downsides or costs. And it just 19 strikes me that there's a host of instances where 20 privacy is very important, very sacrosanct, 21 protected in law.</p> <p>22 And so the -- I guess the -- the prima</p>	<p style="text-align: right;">Page 179</p> <p>1 somebody bought last week. I'm sure that would 2 predict all sorts of risk factors. I'd like to 3 know if they smoked. I'd like to know -- you know, 4 you -- as a -- you know, somebody who works in 5 public policy, I could come up with a long list of 6 things which are -- we know it's -- normally take 7 for granted that are matters of privacy, that you 8 could imagine if it were open to public disclosure, 9 we could have all sorts of nice benefits that would 10 allow us to -- to scrutinize, penalize, you know, 11 avoid others and maybe different -- so --</p> <p>12 Q Let me dig in, because I'm not -- maybe I 13 just didn't articulate what I was looking for.</p> <p>14 A Uh-huh.</p> <p>15 Q It may be a little more simpler even. 16 When you say the legal system has set a 17 high bar, are you referencing a legal standard? 18 Are you referencing a Supreme Court precedent? 19 What are you -- what are you talking 20 about when we talk about a legal system high bar?</p> <p>21 A Sure. Yeah. So in -- in two senses. In 22 a colloquial sense, generally for the most part,</p>

<p style="text-align: right;">Page 182</p> <p>1 I'd say American citizens think highly of their 2 right to privacy. 3 In a more legal context, Supreme Court on 4 one -- more than one decision has viewed rights of 5 privacy as actually -- I mean windows into -- you 6 know, even enormous areas of law. You can think of 7 the right to choose, the right to contraception. 8 Fundamental aspects of law that they recognize as 9 the privacy interest being the legal wedge, the, as 10 it were, normative, ethical legal argument that has 11 propped up those legal decisions. 12 So it's like colloquially Americans care 13 about privacy. You know, obviously, this is 14 figured into, you know, different legal precedents 15 and decisions. 16 The -- my claim is, I think, probably -- 17 you know, it makes more sense to consider in just 18 as the general sense. I'd say there's a -- an 19 expectation that many American citizens take for 20 granted that their privacy interests outweigh a lot 21 of states' interests when it comes to regulating 22 their personal behavior.</p>	<p style="text-align: right;">Page 184</p> <p>1 I mean that's fair, right? 2 A Of course. 3 Q Okay. And the law would value some 4 privacy rights over others, right? 5 A Sure. 6 Q Okay. So when you talk about this high 7 bar in the legal system, you're talking about that 8 more colloquially; you're not referencing a 9 particular level of scrutiny or anything in that 10 regard, right? 11 A I -- I did not intend it with any -- a 12 particular legal meaning. Actually, just add that 13 also being familiar with all sorts of data requests 14 from government, even stewards of government 15 information take privacy in the research context 16 extremely seriously. And so there's all -- I mean 17 they're also very high -- I mean very specific 18 legal standards within research ethics that protect 19 privacy as well. 20 Q You go on in that paragraph to talk 21 about -- you say, Second, the law is not well 22 tailored to the supposed aims articulated by these</p>
<p>1 Q You would agree with me, though, that the 2 law treats privacy in all contexts differently, 3 though; is that fair?</p> <p>4 A As I -- yeah, as I mentioned in earlier 5 discussions, I -- I always want to hear about the 6 context --</p> <p>7 Q Right.</p> <p>8 A -- before I can make a clear judgment.</p> <p>9 Q But you would agree with me that there's 10 no one foundational law of privacy that applies 11 universally to every privacy interest; is that 12 right?</p> <p>13 A That seems to be true of almost every 14 legal concept --</p> <p>15 Q Right.</p> <p>16 A -- you've ever articulated.</p> <p>17 Q But you have a lesser privacy interest in 18 say your garbage than you do in your healthcare; is 19 that fair?</p> <p>20 A Potentially, yeah.</p> <p>21 Q Okay. And so the law does recognize 22 distinctions between application of privacy rights;</p>	<p style="text-align: right;">Page 185</p> <p>1 reports.</p> <p>2 Do you see that?</p> <p>3 A Yep.</p> <p>4 Q Now, what do you mean by well tailored in 5 that context?</p> <p>6 A Yeah. So as I have already argued, I 7 think that it would be ill-advised for parents to 8 be particularly concerned about what are 9 extraordinarily rare occurrences and risks. 10 However, even if a parent had some reason, some 11 particular concern about a playmate or -- and they 12 really wanted to know whether a gun was in a 13 household, then the question is: Well, what's 14 the -- the best way for them to obtain that 15 information?</p> <p>16 And, conspicuously, this law in question 17 doesn't cover long guns, which as I note later in 18 the report -- actually, in the Northeast in 19 particular -- injure children, for example, at much 20 higher rates than handguns. And, again, that's in 21 many Northeastern states that don't share -- share 22 New York's law.</p>

<p style="text-align: right;">Page 186</p> <p>1 And it's a case it's not gonna track      2 people who have exemptions. It's not gonna track      3 illegal firearms, as I document also in this      4 shortly later. Many of the New York incidents, if      5 not most, if not all, involve illegal -- I'd say      6 most involve illegal firearms.        7 So the law -- if -- if this were its      8 purpose, you know, either what Dr. Zeoli or      9 Dr. Sege or Dr. Hamilton says, it doesn't seem like      10 as our legislate -- this doesn't seem how the --      11 how -- that the law was crafted in a way that would      12 accomplish that aim in a most comprehensive and      13 effective manner.        14 Meanwhile, I think that -- and this is in      15 the background -- are there other ways to get to      16 the information, concerns expressed particularly by      17 Dr. Zeoli and Dr. Sege. And in both cases, it      18 seems like yes. There actually -- if you were      19 really concerned -- and, again, I think it's      20 extremely rare that there are genuine concerns      21 here. If you were concerned, there are other ways      22 to get at this information with great reliability,</p>	<p style="text-align: right;">Page 188</p> <p>1 reports, even though it would, in your estimation,      2 infringe upon more privacy rights?      3 A Oh, sure. That's exactly the -- I mean      4 the -- the privacy rights are gonna be there      5 regardless. Clearly, that's a heightened problem      6 if they have twice as much disclosure, as it were.      7 But the State would have a much easier time      8 constructing a sort of, you know, coherent      9 rationale for the law.        10 Q Right.        11 Do you know if New York regulates or      12 requires permitting long guns?      13 A It does not require permitting to buy      14 long guns, at least it -- it may in certain      15 jurisdictions. I'm not sure what it's like in      16 Manhattan. But my understanding, in most of the      17 state it does not.        18 Q Uh-huh. And do you agree with me that      19 the -- it is -- under PL 400, it is the permitting      20 of the handgun that actually triggers the public      21 disclosure, right?        22 A Correct.</p>
<p style="text-align: right;">Page 187</p> <p>1 without public disclosure, and in more informative      2 manner.        3 Q Would you be more comfortable with this      4 law if it applied equally to long guns and didn't      5 have exemptions in it in terms of its --        6 A On -- on this narrow point, it would --      7 it would at least make sense that -- there -- there      8 would be some more coherent rationale rather than      9 what strikes me as more of an ex post attempt to      10 rationalize it. And -- and so at least with regard      11 to that second point, it would -- it would kind of      12 make more logical sense.        13 Q Uh-huh.        14 A The -- the remaining concern, though,      15 would be those who have exemptions wouldn't be      16 revealed; and the most serious concern, really, is      17 you're not getting at illegal firearms, which,      18 again, seem to predominate particularly accidental      19 firearm deaths.        20 Q So you believe that if the law included      21 long guns and didn't have exemptions, it would be      22 more tailored to the aims articulated in these</p>	<p style="text-align: right;">Page 189</p> <p>1 Q And long guns are not permitted in New      2 York, so they don't come under the auspices of PL      3 400, right?      4 A Right. There would be sales records,      5 but --        6 Q Right. But they're not permitted, which      7 is the triggering event --        8 A Right.        9 Q -- right?      10 A Right.        11 Q So in order for them to be included for      12 the law to be more well tailored, New York would      13 have to expand its gun laws to include permitting      14 of long guns, right?        15 A Well, not necessarily. As I said, you      16 could simply have sales records.        17 Q And do you know if the State has access      18 to those types of sales records of --        19 A I would --        20 Q -- long guns?      21 A -- I would presume not.        22 Q I want to go back to this term "well</p>

<p style="text-align: right;">Page 190</p> <p><sup>1</sup> tailored" that you use.</p> <p><sup>2</sup> Do you know that term from concepts that</p> <p><sup>3</sup> you've studied in the past?</p> <p><sup>4</sup> A Yes. So it is -- it is a -- a term that</p> <p><sup>5</sup> is sometimes used in -- with regard to levels of</p> <p><sup>6</sup> scrutiny.</p> <p><sup>7</sup> Q Uh-huh.</p> <p><sup>8</sup> A And the -- it struck me as -- as apt,</p> <p><sup>9</sup> both in that technical sense and in a kind of</p> <p><sup>10</sup> general sense to ask, you know. Because it's an</p> <p><sup>11</sup> interesting question: Does this actually</p> <p><sup>12</sup> accomplish those aims which these experts have</p> <p><sup>13</sup> claimed it would? Is it -- is it set up to do that</p> <p><sup>14</sup> in a sort of effective, efficient, and meaningful</p> <p><sup>15</sup> way?</p> <p><sup>16</sup> Q Okay. But when you use the term "well</p> <p><sup>17</sup> tailored," are you opining on the legal</p> <p><sup>18</sup> constitutionality of the tailoring of this law, or</p> <p><sup>19</sup> something else?</p> <p><sup>20</sup> A That's above my pay grade. I'm saying --</p> <p><sup>21</sup> making a point that -- say as a social scientist,</p> <p><sup>22</sup> if I asked: Is this giving me the information that</p>	<p style="text-align: right;">Page 192</p> <p><sup>1</sup> any data in making your determination that long</p> <p><sup>2</sup> guns are used considerably in these types of</p> <p><sup>3</sup> injuries or domestic violence incidents?</p> <p><sup>4</sup> A Injuries and deaths. So, yes, as I cite</p> <p><sup>5</sup> in my report -- and these are numbers that the --</p> <p><sup>6</sup> are obtainable through the CDC. And let me just</p> <p><sup>7</sup> find the page for you.</p> <p><sup>8</sup> (Witness looked at document). So this</p> <p><sup>9</sup> comes in a few ways. On page 14 I note from CDC</p> <p><sup>10</sup> data. And we learn that slightly less than half of</p> <p><sup>11</sup> accidental firearms deaths among children are due</p> <p><sup>12</sup> to the handguns.</p> <p><sup>13</sup> And then if you turn to -- on page 17.</p> <p><sup>14</sup> Again, you say -- where you stated in -- some terms</p> <p><sup>15</sup> up top, Substantial percentage of accidental</p> <p><sup>16</sup> firearms deaths of children 50.3 percent, according</p> <p><sup>17</sup> to CDC records. This is also -- same is true of</p> <p><sup>18</sup> child suicides by firearms.</p> <p><sup>19</sup> And then I proceed in the next paragraph</p> <p><sup>20</sup> to also look at long guns involved in these, and</p> <p><sup>21</sup> looking at the entire Northeast, looking at other</p> <p><sup>22</sup> states like New Jersey, Connecticut, Massachusetts,</p>
<p style="text-align: right;">Page 191</p> <p><sup>1</sup> these experts are claiming is what you would want</p> <p><sup>2</sup> if you actually thought that these things were a</p> <p><sup>3</sup> serious problem, which could be resolved through</p> <p><sup>4</sup> this information?</p> <p><sup>5</sup> And it seems clear to me that there are</p> <p><sup>6</sup> huge gaping problems with the -- you know,</p> <p><sup>7</sup> comprehensiveness is that this law, which makes it</p> <p><sup>8</sup> hard to claim this is exact -- this is what its</p> <p><sup>9</sup> justification is.</p> <p><sup>10</sup> Q Okay. So you would agree with me that</p> <p><sup>11</sup> the concept of whether a law is well tailored or</p> <p><sup>12</sup> properly tailored from a constitutional law</p> <p><sup>13</sup> perspective, that's -- that's within the province</p> <p><sup>14</sup> of the judge or the jury who make a determination,</p> <p><sup>15</sup> right?</p> <p><sup>16</sup> A I -- I'll leave that to the legal -- the</p> <p><sup>17</sup> lawyers or the judges --</p> <p><sup>18</sup> Q All right.</p> <p><sup>19</sup> A -- to determine.</p> <p><sup>20</sup> Q When you talk about the use of -- when</p> <p><sup>21</sup> you talk about this tailoring concept and you talk</p> <p><sup>22</sup> about long guns and the exemptions, did you rely on</p>	<p style="text-align: right;">Page 193</p> <p><sup>1</sup> and noting that New York isn't particularly</p> <p><sup>2</sup> different than these other states which don't have</p> <p><sup>3</sup> these disclosure requirements.</p> <p><sup>4</sup> Q Right.</p> <p><sup>5</sup> The data you looked at with respect to</p> <p><sup>6</sup> long guns exclusively deals with fatalities; is</p> <p><sup>7</sup> that right?</p> <p><sup>8</sup> A That's correct.</p> <p><sup>9</sup> Q Okay. So you don't -- or do you have</p> <p><sup>10</sup> data that you're aware of that discusses the use of</p> <p><sup>11</sup> long guns in accidental shootings of children that</p> <p><sup>12</sup> resulted in injury?</p> <p><sup>13</sup> A No. But I have no reason to believe that</p> <p><sup>14</sup> the percentages would be disproportionate, you</p> <p><sup>15</sup> know.</p> <p><sup>16</sup> Q Okay. How about do you have data that</p> <p><sup>17</sup> you relied on that talks about the use of long guns</p> <p><sup>18</sup> in domestic violence incidents that result in</p> <p><sup>19</sup> injury and not death?</p> <p><sup>20</sup> A Nope.</p> <p><sup>21</sup> Q Okay. And do you have data that you</p> <p><sup>22</sup> relied on about the use of long guns in domestic</p>

1 violence incidents involving nonphysical threats or  
 2 non -- or threats that do not result in physical  
 3 injury?

4 A Nope.

5 Q You also talk about -- in addition to  
 6 long guns, you talk about the law not including the  
 7 exemptions; the individuals who are exempted,  
 8 right?

9 A Uh-huh.

10 Q Do you have -- did you rely on any data  
 11 as to how many individuals were -- that would have  
 12 qualified but -- but for an exemption?

13 A No.

14 Q Okay. So if there's no data on that  
 15 point, would it be fair to say that you would be  
 16 theorizing that including those individuals that  
 17 are exempted would make the law more well tailored?

18 A So there's two parts to that sentence.

19 I'm not sure how they connected to one another.

20 Q Sure.

21 A So I don't know the exact number of  
 22 people granted exemptions. And the question was,

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1 assuming they did, the question would be: Do not  
 2 Dr. Zeoli's and Dr. Sege's arguments apply equally  
 3 to them, if you think this is really a value for  
 4 safety?

5 Q Do you agree with the law's inclusion of  
 6 exemptions?

7 A It's interesting. The exemption I see is  
 8 a halfway house that it -- clearly, the outrage  
 9 that followed the -- I believe the newspapers'  
 10 exposé. As a political science it's really  
 11 interesting to me to see how vociferous the outrage  
 12 was and how quickly it resulted in actual  
 13 legislative change. Like that -- that was -- that  
 14 must've been pretty substantive.

15 It -- it strikes me as this attempt to,  
 16 on the one hand, validate that there's a real  
 17 concern here to the privacy of gun owners. Like  
 18 this is genuine and people are, you know,  
 19 potentially threatened in a variety of ways.

20 But then the actual mechanism devised  
 21 here in this standard of, quote/unquote,  
 22 harassment -- which has a very specific legal

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1 given that --

2 Q Right. I mean you have no data that  
 3 suggests supporting the conclusion that including  
 4 exempted individuals in the calculation would  
 5 impact the results that Sege, Zeoli, and Hamilton  
 6 want to avoid?

7 A There's a lot to things to say in that  
 8 sentence. One, I don't have any data that this law  
 9 at all is impacting the outcomes they want to  
 10 avoid. That already is a -- is a claim that I  
 11 think is very hard to substantiate.

12 The more basic point on this issue of  
 13 comprehensiveness, however many exemptions have  
 14 been issued, these places -- these households have  
 15 guns. So if you think there's a compelling state  
 16 interest that this is really valuable for  
 17 protecting children, you know, why should there --  
 18 those people be exempted; why should their privacy  
 19 be protected.

20 You know, it's just asking a -- I mean  
 21 may -- maybe nobody's ever applied for this  
 22 exemption. I guess the State would know. But

1 meaning in New York -- I think was a -- an attempt  
 2 to evade the real underlying question. I think  
 3 I -- I view it as a Band-Aid that doesn't really  
 4 address the underlying injury, but it may, in the  
 5 meantime, pacify or satisfy certain constituencies  
 6 that were adversely affected.

7 So like in a -- it's a small step in a  
 8 better direction for those people who fit certain  
 9 exemptions, but it really doesn't address the  
 10 underlying problem.

11 Q You mentioned -- you talk about the  
 12 disclosure and the outrage following the disclosure  
 13 leading to changes in the law.

14 Is that what you had said?

15 A I -- I -- I observed that everything  
 16 seemed to be happening in relatively compressed  
 17 time span here.

18 Q Okay.

19 A I don't know the agenda the legis --  
 20 maybe -- presumably has been people -- on people's  
 21 mind for a while. So I don't know the precise  
 22 timeline.

<p style="text-align: right;">Page 198</p> <p>1        But it struck me both that there was      2 relatively significant public outcry, and that one      3 way or the other there was a -- a legislative      4 attempt to address what was apparently perceived to      5 be a deficiency in the law. I -- I think it -- it      6 didn't -- it wasn't a sufficient way to address it.      7        Q   So, yeah, I'm just trying to understand      8 your concept of the timing of the Safe Act and the      9 amendments to include the exemptions.</p> <p>10       Is it your belief that the Safe Act      11 was -- that the Safe Act came about and these      12 amendments happened as a result of the outrage of      13 the newspaper's public disclosure of this      14 information or -- or --</p> <p>15       A   No, I -- I was only suggesting that --      16 that these were all part of, I think, a -- genuine      17 issues of concern, so either that -- you know, you      18 might think there's a lot of pent-up anxiety about      19 this. The newspaper is one match that lights that.</p> <p>20       It wouldn't surprise me if there were      21 long-standing existing concerns that also found      22 their way legislatively into this separate than</p>	<p style="text-align: right;">Page 200</p> <p>1 stigmatization, or ostracism?</p> <p>2        A   Sure. So two things to say. First, some      3 of this is a matter of commonsense. There is --      4 you know, Willie Sutton, the famous bank robber,      5 when he was apprehended by the FBI was asked: Why      6 do you rob banks? And his answer was: Because      7 that's where the money is.</p> <p>8        And so if -- if guns are used -- you know,      9 if these are valuable things, if they are desired      10 by criminals, you know, if New York does a good job      11 of keeping it out of the hands of criminals, the --      12 it -- it stands to reason, I don't think you need      13 a -- a Ph.D in social science to -- to think this,      14 that, you know, publicizing locations of these      15 valuable things might result in being targeted.</p> <p>16       And, actually, as I was writing this,      17 locally here in the Maryland, in PG County. And      18 then I believe a second one was in Montgomery      19 County, we actually had two burglars where people      20 drove their vans into gun shops at night and went      21 in and looted the gun stores. And so I -- it -- it      22 struck -- it strikes me as -- it strikes me as --</p>
<p style="text-align: right;">Page 199</p> <p>1        that -- separate from that of even before that.</p> <p>2        Q   Let me direct your attention to the      3 bottom of page 3 of your report, the paragraph --      4 last paragraph of that page that begins "however."</p> <p>5        Do you see that?</p> <p>6        A   Uh-huh.</p> <p>7        Q   All right. You say in that paragraph,      8 <del>The many harms that handgun license holders could</del>      9 <del>suffer as a consequence of disclosure that do not</del>      10 <del>rise to the level of harassment, for example,</del>      11 <del>license holders could be targeted by burglars</del>      12 seeking to steal firearms, or subject to      13 discrimination, stigmatization from their      14 communities, and ostracism from social circles.</p> <p>15       Do you see that?</p> <p>16       A   Yes.</p> <p>17       Q   And that's your opinion, right?</p> <p>18       A   That is.</p> <p>19       Q   All right. Now, what data did you rely      20 upon to come to the conclusion that license holders      21 could be targeted by burglars seeking to steal      22 firearms, or subject to discriminations,</p>	<p style="text-align: right;">Page 201</p> <p>1        as we do have evidence that guns are targeted by      2 criminals. This would provide a map that would be      3 used for criminals.</p> <p>4        And to answer your second part of the      5 question, so the -- this question of stigmatization      6 and ostracism, you know, that's partly formed by      7 some of the research I cite on, you know, some      8 modern issues and polarization, political      9 psychology, that suggests that there -- not only is      10 there the potential for explicit, but, in fact, it      11 appears widespread implicit bias against partisans      12 but also bias that's particularly linked and      13 associated to people's association with gun,      14 gun-owning activities.</p> <p>15       Q   All right. Let's look at the burglary      16 issue first, then we'll talk about discrimination      17 and the ostracism.</p> <p>18       Isn't the exact opposite also possible?</p> <p>19       You say, Publicizing the locations of      20 guns could lead to burglaries.</p> <p>21       Isn't -- it is just as possible that the      22 notice -- the knowledge of the presence of the gun</p>

Page 202	Page 204
1 would dissuade the burglar? Isn't that also a	1 burglarization of gun --
2 logical --	2 A Yeah.
3 A Yeah, well, if I was a logical burglar, I	3 Q -- stores?
4 would wait outside the door in the morning until	4 A So these gun stores had big bars and
5 the person went to work. So I -- I think you're	5 security cameras. I think homes are much softer
6 right. You -- you definitely want to plan home	6 targets. I would think much more preferred.
7 invasions when nobody is at home.	7 Now, there's a second part, to answer
8 Q Okay.	8 your question, which may be something worth noting
9 A So -- so I think it does the burglars two	9 in the general conversation here, which is to my
10 things. There's something valuable here.	10 understanding for much of the history of this
11 Definitely don't go there when the homeowner is	11 law -- and this is partly because of changes in
12 there.	12 technology and -- and, you know, digital access, in
13 Q Now, this law, as you testified earlier,	13 effect, in practice, it was fairly hard to access
14 I believe it's been around since 1960, right?	14 these sorts of documents on a systematic basis.
15 A Uh-huh.	15 And in some sense, the -- I mean the
16 Q Sometimes in the '60s?	16 internet has changed this -- this equation, so I --
17 Were you able to find any single incident	17 if you thought about the most fruitful time to
18 of this law being used to result in the	18 study this, as a matter of criminology, I would
19 burglary of someone's handgun from their	19 think there's -- there's an interesting window.
20 home?	20 But that would require a lot of -- a lot of side
21 A So I didn't look.	21 research, which is not --
22 Q Okay. You didn't look. But you did	22 Q How is --
Page 203	Page 205
1 theorize that this could be a clear harm to a	1 A -- in the purview here.
2 handgun license holder.	2 Q -- how is the public information gained
3 Why didn't you look at that if you opined	3 under PL 400?
4 that it could be a harm?	4 A My understanding is historically you'd
5 A Well, I mean I -- there were two news	5 have to make an inquiry.
6 stories the week I was writing this, locally, that	6 Q And that's through FOIL, we established,
7 you know, demonstrated the same thing.	7 right?
8 Q Well, did those demonstrate the same	8 A FOIL-like, yeah.
9 thing?	9 Q Okay. Now, can you make an anonymous
10 Those were -- those were -- you said	10 FOIL request, as far as you know?
11 burglaries to gun stores.	11 A I -- I'm not certain. And we have to --
12 I mean I'm not a gun burglar, but I would	12 I -- in New York?
13 assume that someone would know that there are guns	13 Q Sure. Anywhere. Can you make an
14 in a gun store, with or without public disclosure,	14 anonymous FOIA or FOIL request in any jurisdiction
15 right?	15 in this country, as far --
16 A Yes, burglars target guns. That --	16 A So it -- it -- technically, you can. And
17 Q Yeah.	17 here's how. We have aggregators, so -- like when I
18 A -- that -- we don't dispute that	18 was at Harvard's ethics center, there's something
19 Q But are you likening the homes to guns	19 called "muckrock" up there. And what they would do
20 stores that -- I mean --	20 is -- I -- you know, much of researchers might want
21 A Well --	21 (sic) information about Federal Reserve. And we
22 Q -- your proof for this happening is the	22 would all make a request to "muckrock."

<p style="text-align: right;">Page 206</p> <p>1 And they would aggregate these requests 2 into their own journalistic FOIA. So, in effect, 3 yes, actually, you can.</p> <p>4 Q Okay. So is it your testimony that it's 5 viable that a home -- the home burglar looking to 6 steal guns would partake in some sort of anonymous 7 FOIL request to get information to locate guns that 8 they could burglarize.</p> <p>9 Is that a -- is that a reasonable theory?</p> <p>10 A Well, it turns out by 2012, they wouldn't 11 have to, because newspapers were publicly 12 requesting this information and publishing online. 13 So all you'd need would be an internet connection 14 and, you know, the ability to -- to search.</p> <p>15 Q Uh-huh. But what I --</p> <p>16 A Pardon me. I -- I may have gotten that 17 date -- I see I was mis-citing from the wrong page.</p> <p>18 Q Yeah.</p> <p>19 A In -- in -- in, you know -- in recent 20 memory, newspapers published this information.</p> <p>21 Q Uh-huh. But what --</p> <p>22 A Which meant you did not -- anybody could</p>	<p style="text-align: right;">Page 208</p> <p>1 400 to gain information to burglarize a home for a 2 gun?</p> <p>3 A I did not specifically investigate that.</p> <p>4 However, I would not be surprised if there were to 5 be more evidence of that than there were of 6 accidental deaths of handguns by playmates visiting 7 a house with a legally registered firearm, which I 8 couldn't find a single incidence of.</p> <p>9 Q Is there a reason why you didn't search 10 this before making this -- before opining as to 11 this?</p> <p>12 A It struck me as, on the one hand, an -- 13 an obvious enough conjecture that anybody could see 14 the value that a criminal might make of public 15 records like were published by the newspaper.</p> <p>16 On the other hand, to do a really 17 detailed evaluation at -- at one point, I actually 18 did reach out to your criminal justice statistics 19 office, trying to obtain some data. And it was 20 actually very difficult to get the data. We have 21 deadlines. So it could be the subject of a much 22 larger research project. But the underlying point</p>
<p style="text-align: right;">Page 207</p> <p>1 access --</p> <p>2 Q Yeah, I mean --</p> <p>3 A -- this.</p> <p>4 Q -- that wasn't the question I was asking.</p> <p>5 What I was asking is say before the 6 public -- the newspapers' public access, which has 7 happened, as far as we know, once, do you think 8 it's reasonable to assume that a burglar would FOIL 9 information and use that information to burglarize 10 homes?</p> <p>11 A It's certainly a potential. I think it's 12 almost as ridiculous to think that a parent would 13 do it to a playmate.</p> <p>14 Q Uh-huh.</p> <p>15 A So I -- I find them equally farfetched, 16 if there's a strong barrier. But I take it partly 17 what prompts these concerns in a digital age is 18 because barriers have been moved.</p> <p>19 Q So just to be clear, other than your 20 anecdotal evidence of two gun store burglaries in 21 D.C., do you have any firm data or evidence that 22 suggests that anyone in New York has ever used PL</p>	<p style="text-align: right;">Page 209</p> <p>1 seems to be an obvious one.</p> <p>2 Q Did you discover -- did you search for or 3 discover any news articles anywhere in the state of 4 New York that suggested that someone had used PL 5 400 to gain information to burglarize a home?</p> <p>6 A We were talking about fears earlier, and 7 the possible fear that a abused spouse or other 8 might fear seeing a gun or knowing about a gun. I 9 did see documented many gun owners who feared 10 burglaries. So if you want to, again, include 11 the -- now, it's difficult to measure. But if you 12 want to include these things on the scales, I -- I 13 think they cut both ways.</p> <p>14 And, yes, I came across many reports --</p> <p>15 Q Okay.</p> <p>16 A -- of gun owners who say they felt fear 17 for that particular reason.</p> <p>18 Q Did you pull those reports in your 19 research?</p> <p>20 A I don't mention it in my --</p> <p>21 Q Okay.</p> <p>22 A -- things, but I believe they're publicly</p>

<p>1 available.</p> <p>2 MR. DAGUE: We're going to ask for</p> <p>3 disclosure of any information that the doctor</p> <p>4 relied upon to that end. Any reports that were not</p> <p>5 included in here, we're going to ask for that</p> <p>6 disclosed. And I'll follow up with a letter</p> <p>7 afterwards.</p> <p>8 BY MR. DAGUE:</p> <p>9 Q Yeah, you mentioned reaching out to the</p> <p>10 New York State department -- was it DCJS or State</p> <p>11 Police that you --</p> <p>12 A I think --</p> <p>13 Q -- reached to?</p> <p>14 A -- it was DCJS.</p> <p>15 Q Okay.</p> <p>16 A And what's that, Department of --</p> <p>17 Q Criminal Justice --</p> <p>18 A -- Statistics. I believe that's them,</p> <p>19 yes.</p> <p>20 Q Criminal Justice Statics, I think that's</p> <p>21 the --</p> <p>22 MS. CONNELL: Services.</p>	<p>Page 210</p> <p>1 make a basis of --</p> <p>2 MR. CHUCK COOPER: Well, he's right here.</p> <p>3 Why don't you ask him?</p> <p>4 MR. DAGUE: Well, I --</p> <p>5 MR. CHUCK COOPER: He's right here.</p> <p>6 MR. DAGUE: -- I'd seek to verify the</p> <p>7 credibility that he made this request and sought</p> <p>8 this information.</p> <p>9 MS. CONNELL: You guys can object. And</p> <p>10 then we'll take it up to the judge.</p> <p>11 MR. DAGUE: I'll put it in a letter.</p> <p>12 I'll put it in a letter. We will follow up in a</p> <p>13 letter.</p> <p>14 BY MR. DAGUE:</p> <p>15 Q Okay. What did you ask for from DCJS</p> <p>16 specifically? Do you remember?</p> <p>17 A Yeah, that I -- was on the domestic --</p> <p>18 off the -- I believe I asked, first of all, for how</p> <p>19 I could access crime statistics in the two counties</p> <p>20 that had -- I don't remember how I phrased this,</p> <p>21 but I was asking them, basically, how do I access</p> <p>22 crime statistics.</p>
<p>1 BY MR. DAGUE:</p> <p>2 Q Services.</p> <p>3 And did you personally --</p> <p>4 MS. CONNELL: No, it's statistics, sorry.</p> <p>5 BY MR. DAGUE:</p> <p>6 Q -- personally reach out to DCJS?</p> <p>7 A Yes.</p> <p>8 Q Okay. And did you reach out to them via</p> <p>9 letter, email, or other?</p> <p>10 A It was an email.</p> <p>11 Q And when did you do that?</p> <p>12 A I'd have to go back and check.</p> <p>13 Q Okay.</p> <p>14 MR. DAGUE: We'll call for disclosure of</p> <p>15 that email or letter that he sends. And I'll</p> <p>16 follow up with a letter.</p> <p>17 MR. CHUCK COOPER: Will your question be</p> <p>18 that he relied on something from that office?</p> <p>19 THE WITNESS: I did -- I -- I did not</p> <p>20 obtain any data from them.</p> <p>21 MR. DAGUE: Right. I'm just interested</p> <p>22 to determine what the nature of his request was, to</p>	<p>Page 211</p> <p>1 Q Okay.</p> <p>2 A And are these -- I believe it was a</p> <p>3 discussion around at the county level, what's</p> <p>4 reported to the state. At some point that -- in</p> <p>5 subsequent email, asked about also the -- I think</p> <p>6 the domestic violence reporting system.</p> <p>7 Q Okay. And did --</p> <p>8 A But --</p> <p>9 Q -- DCJS get back to you?</p> <p>10 A They -- yeah, they did. They --</p> <p>11 initially they said, actually, in a lot of these</p> <p>12 counties -- and I don't -- maybe it's precincts. I</p> <p>13 forget how they -- the police stuff is divided.</p> <p>14 But they said a lot of these things have been</p> <p>15 switched over to a new reporting system; therefore,</p> <p>16 they don't have this data at the State level. And</p> <p>17 I be -- I forget where we ended the conversation on</p> <p>18 the -- on the domestic violence, though.</p> <p>19 I think at one point I was trying to</p> <p>20 ascertain whether I could get access to the -- the</p> <p>21 domestic violence reporting system. And I either</p> <p>22 discovered online at a certain point and then</p>

Page 214  
 1 ceased writing them back or maybe they told me, but  
 2 the -- the gist of the conversations was the crime  
 3 reporting for these two counties wasn't probably at  
 4 a level of resolution or not -- wasn't at the level  
 5 of resolution that I would have liked, and -- and  
 6 that it -- that it was gonna take some time to  
 7 figure out how to query this, so --

8 Q Okay. Did you receive any information  
 9 from DCJS or any other source that suggested that  
 10 incidents of burglaries in homes rose after the  
 11 publication of the gun information?

12 A No, but I would have loved to have looked  
 13 at that.

14 Q Okay. And you didn't look at that  
 15 because you didn't get information from --

16 A Yeah.

17 Q -- DCJS?

18 A Yeah. It -- it -- the information was  
 19 not available at the -- with the amount that -- the  
 20 amount of information I would have needed in terms  
 21 of addresses and that sort of thing.

22 Q Did you go to the county specifically and

Page 216  
 1 Q Okay. Now, similar question. We talked  
 2 a little bit about your other suggestion in the  
 3 report that apart from burglary, there's this  
 4 possibility of the subject of the public disclosure  
 5 being subjected to discrimination, stigmatization  
 6 within their communities, and ostracism from other  
 7 social circles.

8 Now, I know you talked about the report  
 9 or study that you looked at with respect to  
 10 partisan stimuli. And we'll talk about that in a  
 11 minute.

12 A Uh-huh.

13 Q But setting that aside for the time  
 14 being, did you have any data, aside from the  
 15 partisan stimuli article that you relied on, any  
 16 data from other sources that supported this claim  
 17 that there were individual gun owners who  
 18 experienced discrimination, stigmatization,  
 19 ostracism at any point since the law was passed in  
 20 1960?

21 A So my understanding is that one of the  
 22 Plaintiffs actually is worried about this.

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 1 ask for the information from them?

2 A No. At that point, the -- it was clear  
 3 some sorts of information either weren't kept or  
 4 were gonna be a headache to --

5 Q Okay.

6 A -- to get, so I -- I was on time with the  
 7 deadline, and that seemed like a distraction at  
 8 that point.

9 Q Okay. So fair to say, then, you have no  
 10 data, no newspaper articles suggesting burglaries  
 11 targeted based on 400; is that right?

12 A Yeah, it's only commonsense I'm relying  
 13 on this.

14 Q Okay. And do you have any anecdotal  
 15 evidence of burglaries in New York happening as a  
 16 result of Section 400's public disclosure?

17 A No, I did not investigate that.

18 Q Okay. So, you know, it's fair to say  
 19 that this is based solely on commonsense and  
 20 speculation?

21 A Reason, commonsense, sort of -- I'd say,  
 22 yeah, obvious speculation.

Page 217  
 1 Q Uh-huh.

2 A So there was, you know, prima facie  
 3 evidence right that there that it was a --

4 Q What's --

5 A -- a sincere worry.

6 Q What's he worried about? Do you know?

7 A My understanding -- I -- I have not  
 8 talked to this individual. My understanding is  
 9 there are a variety of ways in which this knowledge  
 10 might disadvantage someone. It could in -- in  
 11 social circles. It could be people not wanting to  
 12 invite you to events, people not wanting to be  
 13 friends with you, people learning something they  
 14 didn't previously know about you, ostracizing you.

15 Q And let me focus on Doe Number 1. I  
 16 believe that you testified that you believe that he  
 17 had a worry about this.

18 What I was asking is do you know what Doe  
 19 1's specific articulation of this is, what his  
 20 specific concern is? Do you know that?

21 A I didn't speak with Doe -- whatever, Doe  
 22 I --

<p>1 Q Okay.</p> <p>2 A -- or 2 it is.</p> <p>3 Q Well, yeah, you just said that you -- you 4 believe that one of the Plaintiffs was worried 5 about this.</p> <p>6 I was wondering if you know --</p> <p>7 A Right.</p> <p>8 Q -- in what capacity he's worried about 9 this?</p> <p>10 A The -- I don't know all the capacities --</p> <p>11 Q Okay.</p> <p>12 A -- in which he's worried about that.</p> <p>13 Q Did you review his deposition testimony 14 prior to today?</p> <p>15 A I don't believe I've seen his deposition.</p> <p>16 Q And I believe I misspoke.</p> <p>17 It's Doe Number 2, right?</p> <p>18 A Yeah, that's --</p> <p>19 Q Would you be surprised to learn that the 20 extent of Doe Number 2's concern on this front was 21 articulated only to be that his wife would not be 22 included in her garden club if this information</p>	<p style="text-align: right;">Page 218</p> <p>1 data to support this claim that individuals have 2 been discriminated, stigmatized from their 3 communities or ostracized from social circles?</p> <p>4 A No. And it'd be very difficult to obtain 5 that data on short order, precisely given, as I'm 6 sure, you know, the -- the many ways that 7 discrimination can be manifested in our society. 8 So I -- I think it's an interesting question that 9 might be pursued. But it's a complex question, 10 one, difficult in the various ways to -- to -- to 11 measure and get at.</p> <p>12 You know, like all forms of 13 discrimination -- racial, gender, and otherwise -- 14 that we struggle in society to actually document 15 and measure it.</p> <p>16 Q Now you talked about that -- remember, we 17 talked about that Vermont case you were involved 18 in?</p> <p>19 A Uh-huh.</p> <p>20 Q And you conducted a sort of survey in 21 that case?</p> <p>22 A Right.</p>
<p>1 became public?</p> <p>2 A I -- I'm sorry, the first part of it is:</p> <p>3 Am I surprised that that's the case, or that's --</p> <p>4 Q Yeah, that was what he testified to in 5 his deposition.</p> <p>6 A That would certainly be consistent with 7 it.</p> <p>8 Q Would you be surprised that he said 9 nothing about discrimination -- discrimination 10 or stigmatization, only the wife not being included 11 in her local garden club?</p> <p>12 A It doesn't surprise me. I mean I -- I 13 don't know this person's background. The average 14 person on the street wouldn't use the term 15 "stigmatization."</p> <p>16 Q Uh-huh.</p> <p>17 A I don't think my average student would 18 use that. But my average student would be really 19 upset if they didn't get to be part of a social 20 club that they found socially meaningful and 21 valuable at Georgetown.</p> <p>22 Q Now, other than Doe 2, did you find any</p>	<p style="text-align: right;">Page 219</p> <p>1 Q What -- was there a specific name for 2 that type of survey?</p> <p>3 A It was a -- a random survey --</p> <p>4 Q I thought you referred --</p> <p>5 A -- public --</p> <p>6 Q -- to it as something.</p> <p>7 A I mean there's a --</p> <p>8 Q Right. Now, that -- that -- could that 9 have been a way to collect data with respect to 10 discrimination, stigmatization, or ostracism is 11 a -- do a survey of gun owners?</p> <p>12 A The -- oh, and as gun owners. Okay.</p> <p>13 I -- I though you were gonna say a survey of 14 discriminators.</p> <p>15 It's very -- the problem is, like all 16 forms of discrimination, you'd be subject both to 17 response bias of, you know, either people not 18 wanting -- I mean first of all, the privacy concern 19 that you might, you know, tell a stranger about 20 something which you think can disadvantage you.</p> <p>21 And so you're -- it's -- it's a -- it's actually a 22 tough question to get at.</p>

<p>1 And this -- this is true with like all 2 discrimination research. You're asking, you know: 3 Hello. I'd like to talk about the sensitive 4 aspects of your life that we think that might hurt 5 you. So tell me about those. 6 It's a tough -- it's a tough question. 7 So we -- I wouldn't -- a survey approach wouldn't 8 be my preferred approach to -- 9 Q Okay. 10 A -- try and get -- 11 Q But tough or not, a survey could be -- 12 could be used to try to access the information, 13 right? 14 A I would think unless -- a survey is more 15 likely than not to get you bad data unless it's 16 very carefully and thoughtfully constructed on this 17 front. So my concern would be a poorly done survey 18 would be much worse than no survey at all. 19 Q So would information with respect to this 20 incidence of discrimination, stigmatization, or 21 ostracism have been helpful or interesting to you 22 in creation of this report?</p>	<p style="text-align: right;">Page 222</p> <p>1 teaser questions, all these ways to make sure 2 you're not getting bias responses. 3 On this stuff, an experiment is much 4 better situated to try to evaluate that. 5 Q So it's your belief that if you conducted 6 a survey and asked licensed handgun owners if they 7 believed that information -- if information about 8 their ownership got out if they would be 9 discriminated against or ostracized, you believe 10 that they would be hesitant to give you -- to give 11 a surveyor the correct answer on that, because they 12 don't want to talk about discrimination? 13 A I'm not even sure, in New York, if I ran 14 a survey, I could get people to admit to having a 15 handgun license. 16 Q Well, you could use public law Section 17 400 to get that information, couldn't you? 18 A I think they'd distrust me even more if I 19 did. 20 Q Well, if -- 21 A If I said I found your -- 22 Q -- couldn't you --</p>
<p>1 A Pardon me? 2 Q Would information with respect to 3 discrimination, stigmatization, ostracism from 4 social circles have been interesting to you in -- 5 in -- if available, for this report? 6 A What I would have wanted to do -- I mean 7 if -- you know, similar to what was done in that 8 one study -- so there -- the best way to get this 9 would be something like an experiment, where, you 10 know, you could imagine going into a social club 11 that's deciding on its membership or going into a 12 job that's deciding on its employees, and showing 13 them CVs, where half the people -- I don't know -- 14 mention their NRA affiliation, half of them don't. 15 See if that actually has an effect on who gets 16 chosen. 17 So I -- survey stuff would really not be 18 ideal for those purposes. You know, even -- you 19 know, we take extraordinary effort, even in 20 surveys, to ensure non -- anonymity. You also do 21 all these -- I mean even in reg -- like even the 22 one I did in Vermont, you have all these layers of</p>	<p style="text-align: right;">Page 223</p> <p>1 A -- records -- 2 MR. CHUCK COOPER: Hold on. Let him 3 finish. 4 BY MR. DAGUE: 5 Q Go ahead. 6 A If I said, hello, I dug up these records, 7 which are extremely controversial and many people 8 have said shouldn't be public-available, I'd now 9 like to ask you questions, I think there would be a 10 concern there of. You shouldn't have my name in 11 the first place; therefore, I'm very suspicious. 12 And so, yeah, yeah, I think it's a -- 13 Q But that -- 14 A -- it's a difficult -- 15 Q -- that wasn't -- 16 A -- thing to ask. 17 Q -- the question I asked. I asked if you 18 could use the law to get that information to 19 conduct that survey, not what you think their 20 response would be. 21 Could you use the -- could you use the 22 law to --</p>

<p>1 A But --</p> <p>2 Q -- get the information to --</p> <p>3 A What I'm telling you --</p> <p>4 Q -- could you use the law, public law 400,</p> <p>5 to access the information to conduct your survey</p> <p>6 with respect to discrimination, ostrazation, or</p> <p>7 stigmatization of gun owners?</p> <p>8 A I can try to. And that would give me a</p> <p>9 bad survey with not very good data.</p> <p>10 Q And -- and --</p> <p>11 A Is my worry.</p> <p>12 Q -- you're speculating that that would</p> <p>13 give you a bad survey, because you didn't conduct</p> <p>14 the survey, right?</p> <p>15 A Well, you wouldn't even -- there's a lot</p> <p>16 of ways in which you'd want to double-check this,</p> <p>17 but the concern is -- I mean we can study it</p> <p>18 through response rates. Yeah, the concern is you'd</p> <p>19 have both explicitly low response rates and what's</p> <p>20 sometimes called response bias, even in what people</p> <p>21 are willing to admit.</p> <p>22 Q So having not conducted a study into this</p>	<p style="text-align: right;">Page 226</p> <p>1 specifically looked at handgun owners' either</p> <p>2 beliefs or perceptions about stigmatization or</p> <p>3 actual experiments that have tried to examine in</p> <p>4 the field discriminatory effects.</p> <p>5 Q Okay. Let's talk about your final</p> <p>6 sentence on page 3 and top of 4. You talk about</p> <p>7 another potential consequence for disclosure.</p> <p>8 You talk about -- you say, Moreover, this</p> <p>9 may prevent law-abiding citizens who wish to</p> <p>10 acquire a handgun from doing so, because of a</p> <p>11 reasonable fear that this information could be used</p> <p>12 against them in a manner that is not encompassed by</p> <p>13 the formal definition of harassment in New York.</p> <p>14 Do you see that?</p> <p>15 A Uh-huh.</p> <p>16 Q And that's your opinion, right?</p> <p>17 A Not only is that my opinion -- that is my</p> <p>18 opinion.</p> <p>19 Q Okay.</p> <p>20 A And this brings up a great point, which I</p> <p>21 forgot to mention, which is partly who you'd want</p> <p>22 to approach and query in some way is not simply</p>
<p>1 particular issue, are you aware of anyone who has</p> <p>2 conducted a survey -- not just in New York, but</p> <p>3 nationally -- with respect to feelings of</p> <p>4 discrimination, stigmatization, or ostracism</p> <p>5 related specifically to licensed handgun ownership?</p> <p>6 A I'm not. But to reiterate, I -- I think</p> <p>7 a survey would be one of the least informative ways</p> <p>8 to try to get that question.</p> <p>9 Q And I didn't -- that question wasn't with</p> <p>10 respect to just surveys. If it was, I apologize.</p> <p>11 A Sure.</p> <p>12 Q I asked studies.</p> <p>13 Are you aware --</p> <p>14 A Okay. So --</p> <p>15 Q -- about any --</p> <p>16 A -- don't --</p> <p>17 Q -- any studies --</p> <p>18 I had asked specifically about studies --</p> <p>19 A Right.</p> <p>20 Q -- more generally.</p> <p>21 Are you aware of any studies on that?</p> <p>22 A So I don't know of any studies that have</p>	<p style="text-align: right;">Page 227</p> <p>1 those who are handgun owners, but those who want to</p> <p>2 be handgun owners and aren't</p> <p>3 Q Uh-huh.</p> <p>4 A Because, presumably, there's also a</p> <p>5 population -- I believe Doe 2 is one of these</p> <p>6 people -- who wouldn't be on your handgun list</p> <p>7 precisely because they're worried about its</p> <p>8 effects. So there -- and I don't know how large</p> <p>9 that population is, but --</p> <p>10 Q Right.</p> <p>11 A -- presumable many people out there,</p> <p>12 precisely because of these concerns, aren't</p> <p>13 becoming handgun owners at all.</p> <p>14 Q Well, that was my next question. I mean</p> <p>15 you said presumably there are many people.</p> <p>16 Do you know how many there are?</p> <p>17 A It's hard to query that, right?</p> <p>18 Q Right. So you don't have any data to</p> <p>19 suggest how many --</p> <p>20 A No.</p> <p>21 Q -- people there are out there, right?</p> <p>22 A No.</p>

<p style="text-align: right;">Page 230</p> <p>1 Q Okay. Do you have any evidence to 2 suggest how many people that are out there that are 3 suffering from this concern?</p> <p>4 A No. Like -- like many stigmatized 5 activities, there's actually a lot of research on 6 this sort of stuff. If you want to ask about 7 prevalence of HIV infection, number of abortions 8 sought, you know, all sorts of sensitive -- 9 sensitive information. It's a very difficult thing 10 because your traditional off-the-shelf survey stuff 11 is not gonna give you necessarily the -- the 12 frankness and that you -- that you want.</p> <p>13 Q Are you surprised that a law that has 14 been on the books since, as you testified, the 15 1960s, you have no data or hard evidence to support 16 to demonstrate numbers of individuals who are 17 dissuaded from purchasing a handgun because of the 18 law, the public disclosure aspect of the law?</p> <p>19 A No. Of course not. And there's a very 20 clear explanation for that, is that for most of 21 this history, it is very hard to access these 22 records. You have a -- a situation with the advent</p>	<p style="text-align: right;">Page 232</p> <p>1 A -- how that'd be useful?</p> <p>2 Q You opine that there are law-abiding 3 citizens who are prevented from purchasing a 4 handgun because of this law.</p> <p>5 What I asked is: Do you think that data 6 should have been looked -- you should have looked 7 at data that demonstrated how many handguns have 8 been purchased, and if there's a dip in handgun 9 purchase surrounding amendments to this law or 10 creation of this law?</p> <p>11 A Yeah, I think that would be less 12 informative than -- than you may hope. The -- I 13 would welcome, if New York wants to make available 14 to me, data like that. You know, similar with the 15 Department of Criminal Justice Statistics. It 16 occurs to me there are some kind of need to 17 econometric studies one could do.</p> <p>18 Q Did you request that data?</p> <p>19 A The -- again, I was -- I was -- in those 20 two counties -- I believe it was two counties I 21 inquired about it. Maybe Rockland and Westchester. 22 I might have inquired about one of them first. But</p>
<p style="text-align: right;">Page 231</p> <p>1 of digital technologies, where all of a sudden this 2 stuff, like the newspaper, can be available on a 3 mass scale. And fairly shortly after that, you 4 have an injunction. So actually, the -- the window 5 in which this is stuff is happening is pretty 6 limited.</p> <p>7 Q Do you know how many handguns -- licensed 8 handguns were sold in New York since the advent of 9 this law in the 1960s?</p> <p>10 A I don't. I mean I estimate, you know, 11 based on those disclosure numbers, how many 12 potentially current handgun permit owners there 13 might be.</p> <p>14 Q Well, if you're going to opine about with 15 respect to law-abiding citizens wishing to acquire 16 handguns who won't, don't you think it would be 17 interesting to have looked at the numbers and rates 18 of licensed handguns purchased in New York since 19 the advent of this law over the last 30-plus years?</p> <p>20 A I'm not sure that I follow. Can you 21 suggest --</p> <p>22 Q Sure.</p>	<p style="text-align: right;">Page 233</p> <p>1 it quickly became evident to me that they did not 2 either possess or were not able to turn over to me 3 the -- the resolution of data that would be needed 4 for what I was looking into.</p> <p>5 Q Did you request from those counties -- 6 just to be clear, did you request this specific 7 information about with respect to handgun licenses 8 issued during periods of time?</p> <p>9 A No. My -- the -- the flow of work on 10 this was first I wanted to get -- see if I could 11 get crime data by -- actually, with the locale. 12 And the -- the next step would have been to see 13 whether you can -- to delete the handgun owner 14 stuff, where I could have studied its effects on 15 that stuff.</p> <p>16 So once I realized I couldn't get the 17 data I was hoping for and -- but, again, if -- if 18 New York State wants to provide that data, I'd be 19 more than happy to look at it.</p> <p>20 Q Right. But you would have to request 21 that first.</p> <p>22 And did you request that from DCJS or</p>

<p>1 every county in the state?</p> <p>2 A No. No, that's --</p> <p>3 Q Okay.</p> <p>4 A -- that was infeasible on the time scale</p> <p>5 that --</p> <p>6 Q Okay.</p> <p>7 A -- I was working on.</p> <p>8 Q So what data or studies or anecdotal</p> <p>9 information did you base your conclusion that there</p> <p>10 are law-abiding citizens who would like to acquire</p> <p>11 a handgun but are not doing so because of Section</p> <p>12 PL 400?</p> <p>13 A Well, I have the -- the prima facie claim</p> <p>14 by the Defendant.</p> <p>15 Q Uh-huh.</p> <p>16 A And then I step back and ask, well, what</p> <p>17 do we have good research on, on this domain of, you</p> <p>18 know, concerns about stigmatization, ostracism,</p> <p>19 adverse impact. And, of course, you know,</p> <p>20 generally on discrimination stuff, there's been a</p> <p>21 lot of interest in these questions. And we have</p> <p>22 this study from 2014. And this is -- this is, you</p>	<p style="text-align: right;">Page 234</p> <p>1 willing to reward co-partisans, but also that</p> <p>2 they're willing to punish partisans, even beyond</p> <p>3 say independence.</p> <p>4 And as it happened for this very study,</p> <p>5 the most discriminate set of stimuli that I could</p> <p>6 get included the National Rifle Association logo,</p> <p>7 which, you know, on the surface of it is kind of an</p> <p>8 interesting finding. But it also means that the</p> <p>9 partisan attributions that are very much underlying</p> <p>10 this animus and underlying the behavior associated</p> <p>11 with it, has this explicit link to firearms, to</p> <p>12 firearms affiliation and identity.</p> <p>13 And I thought this is actually a pretty</p> <p>14 interesting study to --</p> <p>15 Q Let's take a look at --</p> <p>16 A -- document some of this.</p> <p>17 Q Doctor, you're talking about the Fear and</p> <p>18 Loathing Across Party Lines study by --</p> <p>19 A That is correct.</p> <p>20 Q -- Iyengar and Westwood?</p> <p>21 A That's right.</p> <p>22 Q Okay. Isn't it true -- you said that --</p>
<p style="text-align: right;">Page 235</p> <p>1 know, well before Trump was even -- announced a</p> <p>2 candidacy documenting political polarization and</p> <p>3 its effects.</p> <p>4 And one of the -- I mean bombshell --</p> <p>5 this is a -- very widening on paper, one of the --</p> <p>6 the bombshell revelations for this, is the -- the</p> <p>7 bias that accompanies, you know, partisan and</p> <p>8 co-partisans and out-group partisans appears to be</p> <p>9 as severe, if not worse, than racial bias. And</p> <p>10 that, in fact, this translates to people's -- it's</p> <p>11 not only a -- and -- and part of the -- the</p> <p>12 innovation of this is it's looking at what's</p> <p>13 sometimes called implicit or -- or you might think</p> <p>14 of it as unconscious bias.</p> <p>15 But not only does that exist, as it were,</p> <p>16 in people's minds, but it also seems to actually</p> <p>17 affect their real decisions -- their -- their</p> <p>18 decisions in all sorts of, you know, real world</p> <p>19 type scenarios.</p> <p>20 So they have this task of awarding</p> <p>21 scholarships. They have these various economic</p> <p>22 games. And it's both the case that people are</p>	<p style="text-align: right;">Page 237</p> <p>1 you said that this -- some of the most intense</p> <p>2 partisan feelings was related to the NRA logo,</p> <p>3 right?</p> <p>4 A That's correct.</p> <p>5 Q And that's your reading of the study?</p> <p>6 A Yes.</p> <p>7 Q Okay. Now, I read the study. And the</p> <p>8 way I interpreted that more was that the author</p> <p>9 selected a -- a set of associational images for</p> <p>10 R&amp;D. And one of them they selected was the NRA.</p> <p>11 And for the Democrats, it was Greenpeace.</p> <p>12 Do you believe this study concludes in</p> <p>13 any way that individuals react to the NRA logo</p> <p>14 specifically, or was that just an associational</p> <p>15 device they used?</p> <p>16 A Right. Did you read the online material,</p> <p>17 the -- there's supplemental materials for this?</p> <p>18 Q No. And that's what I'm asking.</p> <p>19 Where is that --</p> <p>20 A Okay --</p> <p>21 Q -- in that there, if --</p> <p>22 A -- so it --</p>

Page 238	Page 240
1 Q -- it exists?	1 Q -- this --
2 A -- yep.	2 A Sure.
3 Q If it exists --	3 Q -- and then we have something we can
4 A Yeah, so --	4 refer to.
5 Q -- where is --	5 A Yep.
6 A -- it's on --	6 (Defendants' Deposition Exhibit No. 3
7 Q Let me clear it up.	7 marked for identification.)
8 So do you believe there is information or	8 BY MR. DAGUE:
9 materials out there that demonstrate that; and	9 Q Okay. Doctor, just for the record, I've
10 where are they, if so?	10 handed you what's been marked as Defendants'
11 A Yeah, so they published -- and this is	11 Exhibit 3. I represent to you that this is a copy
12 increasingly done in academia. They published	12 from an online version of "Fear and Loathing Across
13 online supplemental materials. It's probably about	13 Party Lines" by Shanto Iyengar and Westwood.
14 three times as long as the article. And it's not	14 Just quickly, is this the article that
15 obvious when you go on the page, but if you search	15 you've relied on in your expert report, excluding
16 this article and you go to its -- its publisher's	16 the supplemental materials you just referenced?
17 page, scroll down. At the bottom of the page	17 A That's correct.
18 there'll be a thing you can click for supplement --	18 Q Okay.
19 supplemental material. You have to click that even	19 A And I'll -- I'll just also call attention
20 to enlarge it.	20 on the last page. It says, Additional supporting
21 Q Okay.	21 information to be found on the online version. And
22 A Then you click there. And so they --	22 then where it also says, Measure and sample
Page 239	Page 241
1 they go -- go through with extraordinary detail	1 information are included in supporting information.
2 everything they do.	2 Q Okay. So just to kind of close the loop
3 So before they get to this spot, what	3 on this --
4 they've done is taken ten of these from a -- from	4 A Yes.
5 a -- a pool of ten possible logos and stuff. They	5 Q -- when you were talking about the logos
6 do pretest, with people from Amazon mechanical	6 and things, were you talking about the logos in the
7 turf. So it's, essentially, a way of getting a	7 associational BIAT portion of the study that are
8 cheap, kinda poll of random people.	8 found on page 4 of the study?
9 And so they -- so they do -- they test	9 A Yeah, so the -- like the NRA logo and the
10 all these different, you know, logos --	10 Greenpeace logo, these were part of much longer
11 Q Okay.	11 lists of logos which were first pretested to find
12 A -- identifications. And this is a sub	12 out which are the most discriminant --
13 selection, which is de fact to -- found to be the	13 Q Okay.
14 most extreme actual identifiers.	14 A -- in -- in, you know, essentially
15 Q Okay.	15 sorting partisan identity and affiliation.
16 A So yeah. So that's -- so yeah, that's a	16 Q Okay. Now -- so from the supplemental
17 good concern.	17 materials, we find out that these eight logos had
18 Q Yeah.	18 been whittled down from a larger pool, fair?
19 A They address it.	19 A Yes.
20 Q Let me just hold you up. Because we're	20 Q And they were whittled down based upon
21 referring to this. I think -- let me just mark --	21 severity of reaction in the polling populace?
22 A Yeah.	22 A Yes. Yeah. Yeah.